

THE GOVERNMENTS OF EUROPE

BY THE SAME AUTHOR

THE GOVERNMENT OF THE UNITED
STATES

THE GOVERNMENT OF EUROPEAN
CITIES

THE GOVERNMENT OF AMERICAN
CITIES

MUNICIPAL GOVERNMENT AND ADMIN-
ISTRATION (2 vols.)

PERSONALITY IN POLITICS

THE MAKERS OF THE UNWRITTEN CON-
STITUTION

THE GOVERNMENTS OF EUROPE

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"I am tempted to believe that what we call necessary institutions of government are nothing more than institutions to which we have grown accustomed, and that in matters of political framework the field of possibilities is much more extensive than men living in their various countries are ready to imagine."

Alexis de Tocqueville.

PREFACE

The interest of Americans in the governments of Europe has been considerably stimulated by the events of the past twenty years. Washington said in his Farewell Address that "Europe has a set of primary interests to which we have a very remote relation"; but that statement is no longer true. Our relations with the old continent have now become everything but remote. The newspapers of the United States prove it by the amount of space which they devote to the vicissitudes of European politics. A budget speech in the House of Commons gets into the headlines nowadays, and is no longer relegated to a couple of paragraphs on one of the inner pages. The election of a German president or the fall of a French ministry sends its echoes into all parts of the New World. We are slowly learning to think internationally—and it is about time.

For this reason it would seem desirable that Americans should know something about the various European governments, how they are organized, what sort of political machinery they use, and wherein their governmental methods differ from those of the United States. It is more than desirable: it is essential to the intelligent reading of the daily news from overseas. For without some knowledge of what a government is, it is impossible to understand what a government does. The aim of this book, therefore, is to describe in a general way and in simple language the antecedents, organization, and processes of government in the chief European countries, more particularly in Great Britain, France, Germany, and Italy, but with some attention to Switzerland, Russia, and the succession states as well. A final chapter, on the League of Nations as a scheme of government, has been added.

The subject is a big one, with all sorts of ramifications, and no attempt has been made to deal with it in an exhaustive way. My aim has merely been to provide, for the general reader and the college student, a pen-picture of these governments in silhouette, as it were. I have tried to show how they came to assume their present forms, what principles they rest upon, what agencies they use for the making of laws, how the execution of public policy and

the administration of justice is carried out, what influence is exerted upon the various governments by political parties, and what outstanding problems they are now trying to solve. At the close of each chapter there is a short list of accessible books to which the reader may refer if he desires to become familiar with the details of governmental practice in the various countries.

I have a good many obligations to place on record. In connection with the original edition Mr. I. G. Gibbon, C.B.E., of the British Ministry of Health, and Mr. Maurice L. Gywer, C.B., of the Inner Temple, barrister-at-law, late Fellow of All Souls College, Oxford, were good enough to read the manuscript of the chapters on Great Britain and to give me helpful suggestions on every one of them. I sincerely appreciate and gratefully acknowledge the assistance which these two highly competent scholars gave me in my attempt to describe the world's most remarkable government. To Professors George La Piana and Carl J. Friedrich of Harvard University, and to Professor Albert Guérard of Stanford University, as well as to Mr. Godfrey Davies of the Huntington Library, on all of whom I have inflicted portions of the proof-sheets, I am indebted for many suggestions of value. They have guarded me from numerous errors, a service for which my readers should be no less grateful than I am. As for the errors that remain, I can only remind the critical that "Who faulteth not, liveth not; who mendeth faults is commended."

Mr. Linton Eccles and Mrs. Ethel H. Rogers of Pasadena have given me much assistance in the preparation of the manuscript for the press.

WILLIAM BENNETT MUNRO.

PASADENA,
March, 1931.

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THE GOVERNMENTS OF EUROPE

THE GOVERNMENTS OF EUROPE

CHAPTER I

THE NATURE OF THE BRITISH CONSTITUTION

En Angleterre la constitution . . . elle n'existe pas!—*Alexis de Tocqueville.*

An infinitely complex amalgam of institutions and principles, the British constitution is naturally devoid of all comprehensive system, yet . . . it is perfectly intelligible.—*Josef Redlich.*

The art of self-government has been the greatest contribution of the Anglo-Norman race to the progress of the world. Civilized man has drawn his religious inspiration from the East, his alphabet from Egypt, his algebra from the Moors, his sculpture from Greece, and his laws from Rome. But his political organization he owes mostly to English conceptions, and constitutional systems all over the world are studded with words and phrases which can be explained only by reference to the theory and practice of English government. The British constitution is the mother of constitutions; the British parliament is the mother of parliaments. No matter by what name the legislative bodies of other countries may be known, they all bear the impress of their maternity. Hence it is difficult for anyone to have a true understanding of the government under which he lives unless he first gains some knowledge of its English antecedents. This democratization of the civilized world during the past two hundred years, largely through the influence of Anglo-Norman leadership, is the most conspicuous fact in the whole realm of political science.

The mother
of parlia-
ments.

In the history of mankind only two races have made notable and permanent contributions to the art of governing great populations—the Romans and the English. Ancient Rome elaborated a scheme of government and a system of law which for centuries exercised a profound influence in all regions of the old world. But Rome's

Political
genius of
England
and Rome

political evolution carried her from a popular government to an absolute one, from a republic to an imperial absolutism. Therein it ran counter to the current of progress. The development of political institutions in England went in precisely the opposite direction. England began as an absolutism and evolved into an imperial democracy. Her political institutions, by reason of their harmony with the needs of an advancing civilization, have been far more closely and more widely copied than were those of Rome.

Political
evolution
exemplified.

Nor is it merely because of this world-wide influence that the constitution of Great Britain ought to be studied,—and studied before that of any other country. It is the oldest among the existing constitutions of the world. With the exception of the half dozen years in which Oliver Cromwell quitted his farming and served as President of the English Republic under the title "Protector of the Commonwealth," its general framework has undergone no drastic change for at least five centuries. Nowhere else has the world witnessed a political evolution so prolonged and so relatively free from great civil commotion. There have been revolutions in England, not all of them bloodless; but they merely cleared the obstructions out of the channel. They did not deflect the main current of political progress. The new dispensation began where the old left off. After each upheaval the process of constitutional evolution was speeded up. So, while it is possible to mark out epochs or stages in the development of the British constitution, this is done by noting differences after long periods rather than by coming upon sudden transformations at definite times.¹

Why Eng-
land devel-
oped free
institutions:

1. Her geo-
graphical
isolation.

Three reasons account for the remarkable smoothness with which the course of British constitutional development has been run. The first is to be found in the geographical isolation of Britain from the mainland of Europe. Nothing but a narrow strip of channel separates England from the continent, but these twenty miles of water have afforded a measure of defense which no other great country of Western Europe has enjoyed.² During many centuries this protection obviated the need for a large standing army and thus withheld from the British monarchs the one weapon with which they might have crushed popular liberties as did the Bourbons in

¹ George Burton Adams, *The Origins of the English Constitution* (New Haven, 1920), p. 43.

² The only other European country which has had a relatively uninterrupted political development, akin to that of England, is Switzerland. Here also a partial explanation is to be found in the natural facilities for defense against armed invasion.

France and the Hapsburgs in Spain. The English kings claimed a right to maintain a standing army, but they never succeeded in making good this claim, and the Bill of Rights eventually disposed of it by an express declaration that "the maintenance of a standing army in time of peace without the consent of parliament is contrary to law." England's insular position is by far the most important clue to a proper understanding of her constitutional history. Shakespeare was not unmindful of this fact when he wrote of his native island as

This precious stone set in a silver sea,
Which serves it in the office of a wall,
Or as a moat defensive to a house
Against the envy of less happier lands.

In the second place the undisturbed political evolution of England has been due to the genius of her people. The fusion of racial strains—Celt, Saxon, and Norman, Dane,—gave to the British islands a breed of men in whom the ardor for free political institutions was enduring and strong. So strong did it prove to be, in fact, that it ultimately became the root of Britain's difficulties with her own colonies. The people of the British isles, and their descendants wherever scattered, have in all ages been hostile to improvised, uncertain, or dictatorial government; on the other hand they have displayed a loyal respect for all political authority that is based upon their own consent.

2. The
genius of
the race.

And something, finally, must be attributed to the happy accident that no rigid constitutional framework was devised in the earlier stages of British history to hold the course of political development in bondage. Englishmen have never had much use for political abstractions. They do not look for logic or "comprehensive system" in their government. They are not worried by political inconsistencies or anachronisms. They are more concerned with the practice than with the principles of political organization. Accordingly, the British constitution has never been constrained into stereotyped form. It has remained flexible, uncoded, and to a degree indefinite.

3. Her constitutional
flexibility.

The constitution of a state or nation consists of those fundamental provisions which determine its form and methods of government. It is the accepted basis of political action. Tom Paine once argued that where a constitution cannot be produced in visible form there

What is
constitution?

is none; but he was wrong. If certain rules, provisions, and customs are accepted by the people as the basis of government they form a constitution, whether embodied in a single document, or in several, or in none at all. *Constituere* is to establish. A constitution is something established as the legal basis of government—whether by a constitutional convention or by process of evolution. Most constitutions have been ordained and established by the first of these two methods; the British constitution is the outstanding example of the second.

The American conception.

Hence the American student who walked into a great London library some years ago and amused the attendants by asking for "a copy of the British constitution" was doing a perfectly logical thing from the American point of view. He knew that in his own country there was such a constitution; as a schoolboy he had seen it printed in textbooks. Perhaps he had undergone the scholastic oppression of having been required to memorize it. In public discussions he had heard the provisions of that document quoted as the last word, the supreme law of the land. To his way of thinking it was inevitable that a constitution should be a document, concise in form, orderly in arrangement, and definite in its terms. There are forty-nine such constitutions in the United States.

It does not square with the facts.

Yet it is not accurate to say that the government of the American Republic rests on these written documents alone. For the real constitution of the United States includes not only the document which the Fathers framed in 1787, but all that has been read into it by the courts, and all that has been read out of it by Congress during the past hundred and forty years. When James Bryce asserted that the constitution of the United States is "so concise and so general in its terms that it can be read in twenty minutes," he did not mean to imply that anyone could obtain even an elementary grasp of American government in that length of time. By merely reading the four thousand words of the federal constitution one would learn nothing about legislative procedure, state government, local government, party organization, and a dozen other matters which are of the greatest importance in the American political system. To read the American constitution in its wider sense, would take not twenty minutes but twenty months.

The original English constitution.

In the terminology of political science the word *constitution* was first employed to designate certain fundamental customs or ancient usages declared in solemn form by the English king with the assent

of his Great Council. Thus Henry II, in 1164, issued a set of rules governing the relations between the secular and ecclesiastical courts, and these became known as the Constitutions of Clarendon. Ostensibly they were not new rules, but merely the old usages put into written form and formally declared. So it was with the provisions which the barons wrung from King John in 1215. On a much broader scale Magna Carta enumerated the various fundamental customs of the realm. It was a document of definition, not of legislation, and might just as well have been called the Constitution of Runnymede. This surrender of the king marked the beginning of constitutional government in Europe; that is, of government based upon a definite understanding among the parties concerned in it.

But these constitutions and charters did not embody all the principles upon which the government of England rested during the succeeding centuries. From time to time they were supplemented by successive confirmations of the Great Charter, by the Provisions of Oxford (1259), and by a series of great statutes. Later came the Agreement of the People, drawn up by Cromwell's soldiers in 1647, and the Instrument of Government issued by the Protector in 1653. This Instrument of Government was a formal written constitution in all its essentials, for it set forth in some detail the powers of the executive and the legislature. It established a British republic with legislative power vested in a single chamber and a president (Lord Protector) with a life tenure. But parliament never accepted this constitution, and after Cromwell's death, when the monarchy was restored, it merely decreed that the government of England should again be conducted "according to the ancient and fundamental laws of the kingdom." Thus ended the first and only experience of England under a constitution of this type.

Additions
to it.

But it was merely a prelude to a new experience with formal constitutions on the other side of the Atlantic. The American colonies caught the idea involved in the Instrument of Government and utilized it. During the latter part of the seventeenth century they revived the practice of using the term constitution to designate their own fundamental laws, especially the one relating to the organization of their government. And after the Declaration of Independence all the thirteen states utilized the word constitution to signify the new instruments of government which they set up. In other words, America borrowed the term from England, gave it a

Spread of
the idea.

more precise meaning, and by her example during the past hundred and fifty years has been largely responsible for its extension throughout the world.

What the
"constitution"
means
to an Eng-
lishman.

Great Britain has never had a constitutional convention like the one that met at Philadelphia in 1787. The British constitution is the product of continuous and almost imperceptible accretion. That is why a distinguished French publicist once compared it to a "river whose moving surface glides slowly past one's feet, curving in and out, and sometimes almost lost to view in the foliage." In other words it is the result of a process in which charters, statutes, decisions, precedents, usages, and traditions have piled themselves one upon the other from age to age. Or, to use Sir William Anson's metaphor, it is a rambling structure, to which successive owners have added wings and gables, porches and pillars, thus modifying it to suit their immediate wants or the fashion of the time. Its architecture bears the imprint of many hands. It is neither Gothic nor Romanesque nor Florentine; neither Saxon, Celtic, Danish, nor Norman. Rather it is a mediæval edifice which has been renovated and modernized.

A dynamic
affair.

To drop the architectural metaphor let it merely be pointed out that the provisions of the British constitution have never been codified or put into an orderly form, and probably never will be. The task would be virtually impossible, for not only do the usages and traditions cover a wide range, but many of them are not sufficiently definite to be set down in writing. They are continually in process of change, new customs replacing older ones. Precedents are being made almost daily, and these gradually solidify into "customs of the constitution." Some of these customs of the constitution are now so firmly entrenched that everyone accepts them; others are by no means universally recognized, while others, again, are subjected to varying interpretations. It is a fixed and unquestioned usage of the British constitution, for example, that a ministry must resign when it loses the support of a majority in the House of Commons, but it is not a universally accepted usage that it must resign on any adverse vote. The writer who set out to explain just what constitutes "want of confidence" in a ministry would have a hard time doing it. Moreover, a codification of the British constitution, if finished to-day, would be out of date the day after to-morrow, for the whole thing is a growing organism which does not stand still even for a single hour. "The English,"

says a French critic, "have simply left the different parts of their constitution wherever the waves of history happen to have deposited them."

The difference in this respect between the British and American constitutions, however, has been clouded by our habit of using the same word in two dissimilar meanings. If we use the term constitution in its proper sense to include the entire body of written and unwritten rules by which the fundamentals of government are determined, then both Great Britain and the United States are alike in possessing something that answers this description. In both countries this aggregation of fundamental rules, whether written or unwritten, is constantly developing, broadening, changing. The constitution of the United States includes not only the original document of eighty-one sentences which were so laboriously put together at Philadelphia in 1787, but the vast mass of statutes, judicial decisions, precedents, and usages which have grown up around it. It is a live, growing organism which never stands still for a single day, and it never can stand still, so long as Congress sits and the Supreme Court hands down decisions.¹

Errors
which have
arisen from
differences
in defini-
tion.

The founders of the American Republic did not encase a living heart in a marble urn. They did not place the twentieth century in bondage to the eighteenth. The American who spends half an hour in reading his national constitution may get a better idea of the fundamental rules which govern his country to-day than does the Englishman who spends the same amount of time in studying Magna Carta, the Bill of Rights, the Parliament Act, and the Irish Treaty; but neither American nor Englishman can in this way gain any comprehensive idea of the political institutions under which he lives.

Hence the student who desires to follow Machiavelli's advice and concern himself with the truth of things rather than with an imaginary view of them will go beyond the formal documents in either case. For the real constitution in any country is like the photograph of an individual: no matter how good a likeness it may be to-day, it will not be a good likeness ten years, or even five years later. The general features of the individual, as of a government, may remain unaltered, but the picture is no longer true to life.

Too much stress has been placed upon the distinction between An example.

¹ See the author's volume on *The Makers of the Unwritten Constitution* (New York, 1929), pp. 1-26.

written and unwritten constitutions. The outstanding feature of British government, we are often told, is that it rests on an unwritten constitution. This statement is more apt to mislead than to enlighten. A substantial portion of the fundamental law by which Great Britain is governed has been put into writing. The relations between England and Scotland, for example, and between England and Ireland, the succession to the crown, the qualifications for voting, the organization and procedure of the courts,—all these and many other fundamentals of British government are on record in black and white.

The elements in the British constitution:

1. Great charters and other landmarks.

✓

2. Statutes.

3. Judicial decisions.

What, then, is the constitution of Great Britain? It consists, one may fairly say, of five elements, not all of which lend themselves to precise definition. First, there are certain charters, petitions, statutes, and other great constitutional landmarks such as Magna Carta (1215), the Petition of Right (1628), the Agreement of the People (1647), the Bill of Rights (1689), the Act of Settlement (1701), the Acts of Union with Scotland (1707) and with Ireland (1800), the Great Reform Act (1832), the Parliament Act (1911), the Government of India Act (1919), and the Government of Ireland Act (1922). But all of these put together cover a very small portion of the fabric of British constitutional law. Most of them merely dealt with the grievances or necessities of the hour. Pieced together, they do not make a comprehensive code. Moreover, they are all within the power of parliament to change at any time.

Second, there is the great array of ordinary statutes which parliament has passed from time to time relating to such things as the suffrage; the methods of election, the powers and duties of public officials, the rights of the individual, and the routine methods of government. The various reform acts from 1832 to 1918 are examples. The use of the secret ballot, to take an illustration, is regarded by Englishmen as a constitutional right; but it rests on a statute. There is, in fact, no legal difference between a great constitutional landmark such as the Parliament Act of 1911 and any ordinary statute. Third, there are judicial decisions interpreting all the charters and statutes, explaining the scope and limitations of their various provisions. They correspond to the long line of decisions made by the courts on constitutional questions in the United States,—except that the line is longer and the cases not so numerous.¹

¹ Most of the important decisions can be found in D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (Oxford, 1928).

Fourth, it is often said that the common law is a part of the British constitution. By the common law is meant that body of legal rules which grew up in England, apart altogether from any action of parliament, and eventually gained recognition throughout the realm. Such securities for personal liberty as the British constitution affords to those who live under it were for the most part brought into being by the common law rather than by statute. Certain legal traditions are embalmed in the common law,—for example, the right to a jury trial in criminal cases; and these may fairly be said to form part of the British constitution in its broader sense. The common law, like statutory law, is continually in process of development by judicial decision.

4. The common law.

Finally, there are various political customs or usages which are scrupulously observed and hence exert a subtle influence on various branches of the government. Usage plays a larger part in the workings of the British constitution than in the constitution of any other country because the British constitution is older and the usages have had more time to grow. A large part of the British governmental system, in fact, rests on custom rather than upon laws or judicial decisions,—for example, such vital features as the cabinet and its responsibility to the House of Commons.

5. The customs of the constitution.

A failure to appreciate the importance of usage and judicial interpretation as agencies of constitutional amendment has led to fantastic comparisons between "that living, ever-changing organism, the British constitution" and "that embodiment of outworn ideals, faded hopes, old fears, primitive economic and social facts," the constitution of the United States.¹ Such comparisons betray a bondage to formalism and a disregard of the facts. No vigorous, progressive nation ever tolerates a rigid constitution. If the methods of formal amendment prove too cumbersome, it will find some other agency of change. The United States, with the help of the Supreme Court, found it a century ago.

So what is the constitution of Great Britain? It is an infinitely complex amalgam of institutions, principles, and practices; it is a composite of charters and statutes, of judicial decisions, of common law, of precedents, and usages and traditions. It is not one document, but thousands of them. It is not derived from one source, but from several. It is not a completed thing, but a process of growth. It is a

A final definition.

¹ Herman Finer, *Foreign Governments at Work* (Oxford, 1921), p. 57.

child of wisdom and of chance, whose course has been indifferently guided by accident and by high design.

How the
British con-
stitution is
amended.

Over every provision of this constitution parliament is legally supreme. This sounds strange to American ears. In theory, at any rate, parliament can alter any feature of British government at will. No charter or statute, however fundamental, is placed beyond the power of parliament to change; there is no judicial decision that it cannot set aside, no usage that it cannot terminate, and no rule of the common law that it cannot overturn. All governmental powers rest ultimately in the hands of parliament. "The jurisdiction of parliament," to use the words of Sir Edward Coke, "is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds." It is desirable that every student of the British political system should firmly grasp this legal principle at the outset. The British parliament is as nearly sovereign as any mundane body can be. The only thing it cannot do is to bind its successors; it cannot interrupt or put an end to the process of constitutional change.

Constituent
and law-
making
power are
one and the
same.

In Great Britain, accordingly, there is no legal difference between *constituent* authority and *lawmaking* authority such as exists in the United States. In the national government of the United States the lawmaking power rests with Congress; but constituent power, that is, the power to amend the constitution, does not come within the scope of congressional authority. To amend the constitution of the United States is far more difficult than to amend a statute, as is shown by the fact that although Congress passes several hundred laws at every session only seven constitutional amendments have been ratified during the past one hundred years. Parliament is supreme in both spheres; it is both the lawmaking and the constituent authority. Even the succession to the throne, as established by the Act of Settlement, can be changed by a simple statute if parliament desires to change it.

Can an act
of parlia-
ment be un-
constitu-
tional?

There is a marked difference, therefore, between the concept of unconstitutionality in the two countries. When we say in the United States that a law passed by Congress is "unconstitutional" we mean that it is contrary to some provision of the national constitution and hence will be declared invalid by the courts. In that sense no act of parliament can be unconstitutional. When an Englishman brands an act of parliament as "unconstitutional," he merely expresses his own opinion that it is a departure from the

existing traditions of British government, that it is unjust, un-British, or an objectionable innovation. If parliament, for example, were to pass a law permitting civilians to be tried by court-martial in time of peace, the whole of Great Britain would undoubtedly rise up and protest that such action was unconstitutional. But no Englishman would think of calling upon the courts to nullify such a law or imagine for a moment that any court, save the high court of parliament itself, could set the law aside. They would demand that the obnoxious law be repealed, or failing this, that a general election be held to let the people choose a new parliament.

This unrestrained legal supremacy of parliament, this power to amend the constitution by the process of ordinary lawmaking, is said to give the British political system a degree of flexibility which is not found in countries where the constituent and the lawmaking power are lodged in different hands. English writers have been in the habit of dilating upon this asserted virtue of their constitution which, they claim, permits it to be adapted more readily to new conditions than is possible in any other country. Many years ago Walter Bagehot, in his brilliant sketch of English government, dwelt at length on this theme. Parliament, he said, could abolish trial by jury, pass bills of attainder, confiscate private property without compensation, take the suffrage away from all but taxpayers, and sell off the British dominions.

In a strictly legalistic sense all this is doubtless true. But there is little profit in discussing an exercise of power based upon the assumption that parliament has transformed itself into a madhouse. Legislators, in all lands, have "a decent respect for the opinions of mankind." What they could do if they dared is not of so much consequence as is what they dare to do. Legislators come from the people; they think and feel as the people do; they are saturated with the same hopes and fears; they are creatures of the same habits, and when habits solidify into traditions or usages they are stronger than laws, stronger than the provisions of written constitutions. The written constitution of the United States forbids the taking of private property without just compensation, but that is not the reason why private property remains unconfiscated in America. Private property is just as inviolable in Great Britain although it is protected by no constitutional guarantees. The real reason for its immunity from confiscation in both countries is the same, namely, the existence of a nationwide belief that to take a man's property

The asserted flexibility of the British constitution.

Is it an actuality?

for public use without compensation is unjust, arbitrary, and an abuse of a government's power.

Flexibility does not depend on ease of amendment.

The frequency with which the constitutional methods and practices of a nation are changed does not depend wholly, or even largely, upon the simplicity of the amending process. In France the process of amendment is almost as easy as in Great Britain. Yet France during the past twenty years has had fewer constitutional amendments than the United States, where the process of amending the constitution is very much more complicated.

Rather it depends on:

1. The breadth of the original provisions.

The flexibility of a constitution depends on two things: first, the nature of its provisions, and second, the attitude of the people toward constitutional amendments. If the provisions of a constitution, whether written or unwritten, are broad enough to permit considerable changes in governmental methods without any alteration in the words, then the constitution possesses flexibility as an inherent virtue. This is true of the constitutions of Great Britain and the United States alike. If, on the other hand, the constitution is cluttered up with rigid details, as are the constitutions of various American states, there is no way of adjusting the document to new governmental needs except by amending its provisions. This does not mean, however, that such constitutions are necessarily more rigid than those of the other type. Whether they are or not depends upon the attitude of those who possess the constituent power. On the face of things the constitution of California is far more rigid than that of Great Britain, but it is in fact more easy to change and it is changed more frequently. A conservative people, with a constitution couched in broad terms, will make relatively few changes in it over considerable periods of time. But if the terms of the constitution are so precise that they leave no leeway for change by interpretation, there will be an annual procession of amendments, no matter how hard the process of amending may be—yes, even though it necessitates bringing the whole people to the polls in order to get an amendment adopted.

2. And the traditions of the people.

The outstanding feature of the British constitution: the gap between theory and practice.

Let it be repeated: the unique feature of the British constitution is not its unwritten character, for a considerable part of it is in writing. Nor is it distinguished from other constitutions by the fact that it can be amended through the ordinary channels of law-making, for the same is true of the Italian and Spanish constitutions. Nor yet does it possess, in actual practice, a greater degree of flexibility than written constitutions in the United States. The unique

feature of the British constitution is to be found in its curious divergence from the actualities of government. In all other countries the constitutional provisions are measurably in tune with the facts. In Great Britain they are not. In the British constitution "nothing is what it seems or seems what it is." There is a gap between constitutional theory and governmental practice such as exists in no other land.

In Great Britain the institutions, forms, principles, theories, ceremonials, and phrases of government remain in existence, unchanged, although their practical importance has long since departed. Functions are performed by one official, or body of officials, in the name of another. Powers which for centuries have not been exercised, and doubtless never will be, continue to be vested in established authorities. By the constitution things are assumed to be done in one way; the officials do them in another way. That is why English writers, in describing their government, devote half their chapters to picturing what it is supposed to be, and the other half to explaining that it is in reality something quite different.

The results
of this gap.

The salient features of the British constitution may accordingly be set forth as follows: first, there is no legal distinction between a constitutional provision and an ordinary statute. Parliament is supreme over both. Second, no British law can be unconstitutional in the American sense. There is no supreme court of Great Britain with power to declare an act of parliament null and void. Third, the British constitution does not recognize the principle of division of powers, the doctrine that legislative, executive, and judicial authority should be vested in separate and independent hands. Nor is there any division of powers between national and state governments as in the United States. Parliament makes the laws, controls the executive, and is itself the tribunal of last resort on constitutional questions. Parliament may legislate on any subject; its field of legislative jurisdiction is confined by no constitutional enumeration of powers, as is that of Congress. Finally, a vast hiatus separates the theory of the British constitution from the actual processes of government.

A summary.

England began her political history as an absolute, or nearly absolute monarchy. And England has become, in the course of the past seven centuries, a limited monarchy, a crowned republic. Yet the theory of absolute monarchy has never been shaken out of the constitution, and the crown is still the source of all authority. In

New sub-
stances
dimmed by
old
shadows.

theory all actions of the government are actions of the crown, performed in the name of the crown. All officers of government are the servants of the crown. The ministers of state are the advisers of the crown, summoned and dismissed at the royal discretion. No statute is valid without the crown's assent; no appointment is ever made (not even that of the prime minister himself) save in the name of the crown. No parliamentary election can be held save in obedience to the king's writ. It is His Majesty's navy, His Majesty's post office, His Majesty's courts, His Majesty's government, and even His Majesty's "loyal opposition" in parliament. This is because the ancient prerogatives of the crown in assenting to laws, in making appointments, and in dispensing justice have never been taken away by any change in the constitution or the laws. But every Englishman knows that all these high-sounding royal prerogatives have been so curtailed and circumscribed by usage and tradition that they are to-day little more than empty formulas. All political power has been shifted from the king to the people acting through their chosen representatives in parliament. The phraseology of royal absolutism remains in the laws even though the last vestiges of it have gone from the practice of British government.

A difficult constitution to portray in print.

The essential and peculiar characteristic of the British monarchy, therefore, is that the king retains the symbolism of absolute power although he has completely lost the substance of it. Law and usage, theory and fact, principle and practice are widely at variance throughout the whole structure of British constitutionalism. This makes the government a hard one to describe. One is tempted to set forth the law, explaining that it is not the practice. Then, on second thought, it seems easier to set forth the practice, explaining that it is not the law. No wonder the impatient Tocqueville shrugged his shoulders and said: "In England, the constitution . . . there is no such thing!"

The general subject dealt with in this chapter has been discussed by many writers on English constitutional history and government. The best short surveys may be found in F. A. Ogg's *English Government and Politics* (New York, 1929), pp. 59-81, in A. L. Lowell's *Government of England* (2 vols., New York, 1908), Vol. I, pp. 1-15, and in Sir William R. Anson's *Law and Custom of the Constitution* (fifth edition, Oxford, 1922), Vol. I, pp. 1-13. Attention may also be called to the chapter on "The Salient

Features of the English Constitution" in Sir John A. R. Marriott's *English Political Institutions* (new edition, Oxford, 1925), and to the same author's *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. I, pp. 149-170, also to the introductory chapter in Sir Sidney Low's *Governance of England* (new edition, New York, 1917), pp. 1-14. A much more extensive discussion is given in A. V. Dicey's *Law of the Constitution* (eighth edition, London, 1915), especially chapters i-ii, xiv-xv, and in note v of the appendix. Jesse Macy's *Nature of the English Constitution* (New York, 1911) is a historical consideration of the subject, a very stimulating and readable one. On the nature of constitutions in general there is a good chapter in W. F. Willoughby's *Government of Modern States* (New York, 1919), pp. 93-106, and reference should also be made to J. W. Garner's *Political Science and Government* (New York, 1928), pp. 498-541. All the books mentioned at the close of chapter ii (*below*, pp. 37-38) also shed light, directly or indirectly, upon the nature of the English constitution.

CHAPTER II

HOW THE CONSTITUTION DEVELOPED

The English parliament strikes its roots so deep into the past that scarcely a single feature of its proceedings can be made intelligible without reference to history.—*Sir Courtenay Ilbert.*

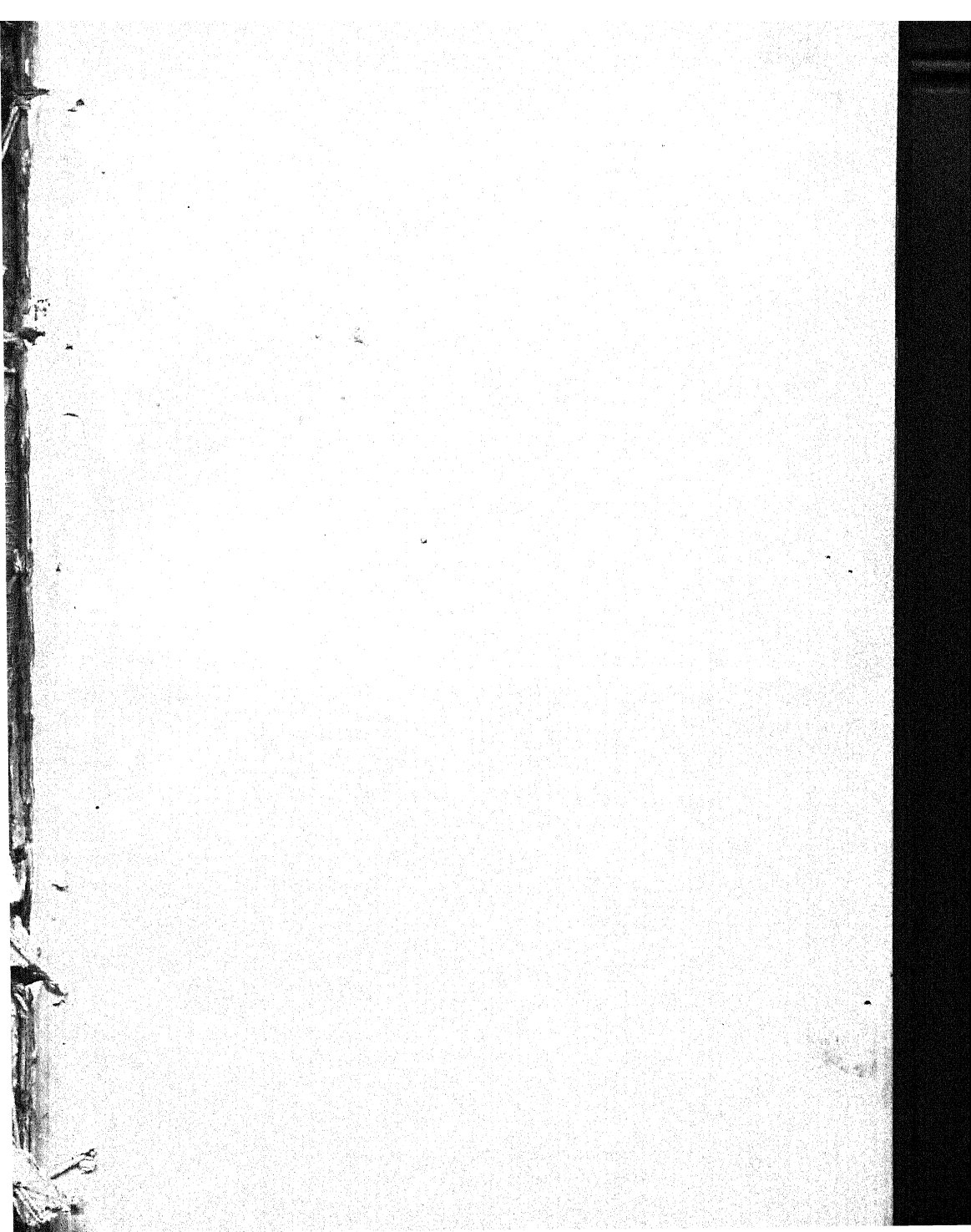
The character of British institutional growth.

"It has been a leading characteristic of English constitutional history," said Woodrow Wilson, "that her political institutions have been incessantly in process of development, a singular continuity marking the whole of the transition from her most ancient to her present forms of government."¹ The development of the English constitution is not a history of breaks or of new establishments, or of successive new creations of instrumentalities of legislation and administration. All the way through it is a history of almost insensible change, of slow modification, and of unforced, almost of unconscious development. Great changes in the spirit of English government have occurred from century to century; but they have been brought about so gradually that the process has hardly been perceptible. One cannot assign definite dates for the various stages as in France or the United States. It must suffice to say that the transition took place during a certain century, or, sometimes, in the course of a designated reign. Hence the reader of this chapter will not be asked to remember a lot of historical dates, for in no other country are exact dates so little worth remembering.

The British islands.

The island of Great Britain, which includes England, Wales, and Scotland, has an area of about eighty-eight thousand square miles. It is about the size of Minnesota. Its present population is about 44,000,000. A little to the westward of the main British island lies Ireland, with an area of about thirty thousand square miles (considerably less than that of Cuba) and a population of only four and a half millions. When Great Britain first appeared on the horizon of recorded history it was inhabited by Celtic tribes, dark-haired invaders from the mainland of Europe who had crossed the Channel several centuries before the dawn of the Christian era. Concerning

¹ *The State* (New York, 1918), p. 183.





the political organization of ancient Britain we know nothing. Most of the tribes came from the same parent stock but this did not prevent their being continually at war with one another. Julius Cæsar crossed from Gaul to Britain with an army in 54 B. C. but did not attempt a permanent occupation of the country. It was not until nearly a century later that the Emperor Claudius undertook the actual conquest of Britain and succeeded in establishing a Roman province there.

The Romans occupied the main island as far northward as the present Scottish border and westward to the mountains of Wales. They did not conquer Ireland. Their occupation of England continued for nearly four hundred years during which time they built great highways, established towns, and developed a considerable trade. But they did not colonize the country with Roman settlers, and when they withdrew in the early part of the fifth century their political institutions soon disappeared. They made no more impression upon the language, religion, and temperament of the people than the British have done during their three hundred years of activity in India. These four centuries of Roman tutelage sapped the war-spirit of the country, however, and when the Romans departed the people found themselves without means of defense against their enemies.

The Roman conquest and withdrawal.

It was not long before marauding tribes from across the North Sea—Danes, the Angles, and Saxons—descended upon the British coast and effected a landing. They arrived in large numbers, drove the people westward, and occupied the greater part of England. Settling on the evacuated lands these various Anglo-Saxon tribes established seven districts or "kingdoms,"—East Anglia, Mercia, Northumbria, Kent, Sussex, Essex, and Wessex, each with its own chief or leader. Then followed a period of intertribal war in which the more powerful absorbed the weaker, until the heptarchy was reduced to three kingdoms and ultimately to two. Finally, the kingdom of Wessex gained supremacy in the ninth century and the English nation was formed.

The coming of the Anglo-Saxons.

Thus *princeps* became *rex*. It was not by voluntary union but by conquest. The smaller kingdoms did not wholly lose their identity, however; they became subkingdoms or shires of the Saxon realm, with an earl or ældorman at the head of each. "At best," says Professor Haskins, "England before the Norman conquest was a loose aggregation of tribal commonwealths divided by

The government of Saxon England:

The king.

local feeling and the jealousies of the great earls."¹ The rulership of the king was rather tenuous; his powers depended in large measure upon his own personal wisdom and vigor. The kingship was hereditary in the sense that it descended in the same family, but there was a body of magnates, the Witan, which apparently had power to choose an heir other than the eldest son or even outside the ruling family if necessity arose. The Saxon king was the leader of his people in war; he made laws or "dooms" with the concurrence of his Witan, and he tried to see that these decrees were enforced. He also presided over the assemblies or synods of the church.

The Witan.

The Witan (Witanagemot), or assembly of wise men, was the king's great council. Its exact organization and powers we do not know, but it had a variety of functions including the right to be consulted by the king on important matters. Only when a weak king was on the throne did it count for much as a governing body. Although it had no fixed membership it customarily included the chief officers of the royal household, the bishops and abbots, the ealdormen of the shires, and the other magnates of the country.² There were no elective members, and save for those whose great prominence made it impracticable to leave them out, the king summoned whom he pleased; hence the Witan varied in size from time to time. There was no national capital; the Witan met periodically in different parts of England. The king presided at its meetings and directed its business. In theory, at least, the powers of the Witan seem to have included the assenting to new laws, the making of treaties and alliances, the approval of taxes or levies, and the regulation of ecclesiastical affairs. It was thus the high council of both state and church, and also acted as a high court for the trial of important cases. In practice its power was in inverse ratio to the personal strength of the king.

The Witan
as a check
on the king.

Since the Witan contained no elective members it was not a representative body, but it was nevertheless looked upon as reflecting the national will and as a potential check upon the arbitrary power of the king. Not as a very dependable check, however, for the king could pack the Witan with his own supporters and thus make sure that it would do his bidding. Still it formed a link

¹ *The Normans in European History* (Cambridge, 1915), pp. 5-6.

² In the Witan held at Winchester in 934, for example, there were present two archbishops, four Welsh "kings," seventeen bishops, four abbots, twelve ealdormen, and fifty-two royal thanes. F. W. Maitland, *Constitutional History of England* (Cambridge, England, 1908), p. 56.

between the king and his realm; its meetings took him around the country where he could see or hear about what was going on; and it promoted the idea that the king should act "in council," not in obedience to his own caprice.

During the Saxon period the great mass of the people lived in little villages and made their living from the land. Each village, with the land belonging to it, formed a township, which was the smallest unit of English social, political, and economic life. Each township had its own local government, which usually consisted of a township "mote" or town meeting and certain elective officers, chief among whom was a reeve. Groups of townships were formed into hundreds, or districts which seem to have contained a hundred warriors or a hundred heads of families. Each hundred, likewise, had a local assembly which appears to have been made up of the reeve "and four good men" from each township.

Saxon local government:

1. The township and the hundred.

Finally, there was the shire with its shire-mote. There is some reason for believing that in its earlier stages this shire-mote or court was a popular assembly of all the free men who cared to attend, but in time it came to be made up of the larger landowners and the officials of the church, together with the reeves and the other representatives of the townships. It met twice a year, usually under the leadership of an ældorman who was appointed by the king. There was also a shire reeve or sheriff, similarly appointed, and in the course of time this official displaced the ældorman as the presiding officer of the shire assembly. As each shire, as a rule, formed a diocese the bishop was usually present to declare the law of the church and to look after its interests. He seems to have presided when cases affecting the church or its officials came up for trial. The shire-mote was a court rather than a legislative body; its main function was to hear and determine cases which were too important to be decided in the hundred-mote, especially cases relating to the ownership of land.

2. The shire.

There are three significant things about this Saxon system of local government. First, it was measurably uniform throughout the whole kingdom, thus creating a bond of national unity. Second, it provided a hierarchy of local areas (townships, hundreds, and shires) each with its own governmental organization. Thereby it laid the groundwork for the Anglo-Saxon system of local self-government. The English people obtained in township and shire their first elementary lessons in the art of governing themselves.

Significance of the local democracy.

Finally, and perhaps most significant of all, is the fact that the governments of the hundred and the shire were based, in theory at least, upon the representative principle. It was there that the idea of choosing representatives first gained a firm foothold. Men were chosen by their fellow freemen to sit in the court of the shire long before there were any elections to parliament. So, when representation in parliament came, the people were ready for it. It is no wonder that men of Anglo-Norman stock have become adept in the art of self-government. There has been no time in the past thousand years when Englishmen have not been electing somebody to represent them somewhere—in shire, or borough, or parish, or county, or synod, or parliament.

The Norman conquest.

The Saxon monarchy did not gain strength with the lapse of time. Its weakness provided an opportunity for the invasion of England by Danish tribes which overran a considerable part of the country and installed a line of Danish kings. After a season of disorder, bloodshed, and extortion, the Saxon dynasty was restored, but only for a brief interlude. The Norman conquest was at hand. On the death of Edward the Confessor in 1066, William of Normandy laid claim to the English throne and supported his claim by bringing an army across the Channel. After defeating his rival claimant in a decisive battle at Battle Abbey (also called Senlac or Hastings), William proceeded to Westminster where he was crowned on Christmas Day.

Constitutional effects of the Norman conquest:

The coming of the Normans inaugurated a second and profoundly important epoch in the evolution of the British constitution. But the Norman conquest, like the American Revolution of seven centuries later, is to be looked upon as a turning-point rather than as a starting-point in the development of representative institutions. The Norman conquerors did not root out the existing system of local government but merely modified it and superimposed some of their own institutions upon it. William desired to rule as king of the English; he wanted the good will of the people; hence he permitted the people to retain their ancient laws, institutions, and customs. He changed things only insofar as seemed necessary to ensure the strength of his own royal power and to establish a centralized rulership over his new kingdom. Thus there took place a fusion of Saxon and Norman political ideals, with lasting advantage to the English nation. The old Saxon constitution was strong in the local areas but weak in the country as a whole; the Norman constitution became strong in both.

First among the significant developments of the Norman period was the increased power of the crown. The Saxon monarchy had been weak because local independence was strong. William set out to make himself every inch a king, and by a variety of measures he succeeded. He curbed the power of the Saxon earls; he broke up their great estates and divided them among his own trusted followers to be held under feudal tenure as his vassals. He made himself head of the church and assumed the right to appoint the bishops. Most important of all, William and his successors drew the system of local government under their control, particularly by increasing the powers of the shire reeves or sheriffs. These sheriffs, who were now appointed by the king and responsible to him alone, became the real rulers of the shires (or counties as the Normans preferred to call them). They enforced the king's will in all parts of the realm, maintained law and order, collected the taxes and turned them into the royal treasury. The sheriffs became the prefects of mediæval England. The ældorman, or earl, presently disappeared from the Norman county court.¹ Finally, under William's successors the crown increased its authority by developing a system of royal judges who went about from county to county hearing cases, deciding them in accordance with the same principles, and thus making the king's law "common" throughout the realm. There had been no body of common law in Saxon times.

The significance of all this royal centralization proved to be far-reaching. It may sound like a paradox, but it is none the less true that the growth of the royal power under the Normans and their Angevin successors paved the way for the ultimate triumph of English democracy. Representative government did not achieve its first victories in England because the barons and lords were strong but because they were weak. Restraints upon the king's authority in England could not be imposed by individual dukes and counts as in France, for there were none powerful enough. The curbing of the king, when the time came, had to be a joint enterprise, participated in by all. In other words the noblemen and landowners of England were compelled to pool their strength against the monarchy and they seized upon parliament as the agency through which this might be effected. Then, needing allies, they finally took the people into camp, and parliament became

1. The increased authority of the crown.

2. The division of the great estates.

3. Royal supremacy over the church.

4. The work of the sheriffs.

5. The itinerant justices and the common law.

Significance of the growth in royal power.

¹ The title "earl," however, has survived as one of the ranks in the British nobility.

more broadly representative. That is why historians speak of English democracy as a by-product of the royal supremacy.¹

The Witan
becomes the
Magnum
Concilium.

Under the Normans the old Witan became known as the Magnum Concilium or Great Council. This body, like its predecessor, was composed of officials and other high personages summoned by the king; no elective members were added. At its sessions, which took place three times a year in William's reign, there were present "all the men of England," as the chronicler puts it, by which he meant all the men that counted. The great council met in different parts of the country—at Westminster, at Winchester, or at Gloucester as the king happened to be—but eventually all its sessions were held at Westminster. It supposedly had the same general functions as the old Witan but its actual power was less because the king's authority had become greater and because all its members were now the king's vassals. It was the high court of the king and his chief advisory council. It dealt with "great men and great causes." The king consulted it in the making of laws and the levying of new taxes. But most of the royal revenue came from feudal dues, and for the collection of these the king needed nobody's approval. The Norman king was the largest private landowner and the richest man in the kingdom; his income was large enough to defray most of the national expenditures without recourse to any regular system of taxation.

A new cog
in the polit-
ical mech-
anism:

The Curia
Regis.

Then there was the Curia Regis or Little Council. It is sometimes said that this was a different body from the Magnum Concilium, and sometimes that the two were the same. They were in fact the same and yet not the same. The anagram may be elucidated in this way: The great council met only at intervals, three times a year at the most. But certain of its members, notably the officers of the royal household (such as the chancellor, the chamberlain, the constable, and the steward) were permanently with the king, travelling with him wherever he went. This small body of officials and barons, in permanent attendance on the king, could be used at any time as a sort of executive council or court, and to these gatherings the name Curia Regis was applied. The king's wishes, the business in hand, the convenience of the barons—various things determined whether a big council or a little council should be called. In other words there were both plenary and restricted sessions of the same body, with no hard and fast line between the two in point

¹ This matter is discussed at length in Henry Jones Ford's *Representative Government* (New York, 1924).

of membership or jurisdiction. It is not improbable that sessions of the Concilium were devoted chiefly to larger questions of justice, finance, and public policy, while meetings of the Curia were chiefly concerned with administrative and routine matters, but even of this we cannot be sure. There was a serene disregard for definiteness in mediæval institutions.

The essential thing to be borne in mind is that the Norman and early Angevin kings governed England with the help of a single non-elective body which met either in formal session with a fairly large membership or informally with a smaller attendance. We do not know the extent to which the king was bound to seek or be governed by its advice in either case. The Norman monarch judged and taxed, levied feudal dues on his vassals and commanded his army, declared the customs of the kingdom and changed them by royal command. He was absolute in theory and little short of it in fact. Nevertheless he did call the leaders of his people together, sought their advice, and sometimes followed it. This habit, under later kings who were not so strong, hardened into a usage and the usage became a constitutional principle. Out of the plenary sessions of the great council the British parliament arose; out of the Curia grew the privy council, the exchequer, and the high courts of justice. So the frame of government in twentieth-century England owes much to this ancient council with its big and little sessions.

The Norman political system was rough at the edges. But most of the crudities were polished off by Henry II, the Conqueror's great-grandson. Henry restored, revived, extended, and defined the organs of English government. A man of legal temperament, adroit and energetic, he infused new life into the administrative and judicial systems. He elaborated the plan of sending royal judges on circuit through the counties; he appointed more competent sheriffs; he brought the jury system into general use, and inaugurated a distinction between the administrative and the judicial functions of the Curia Regis. By holding more frequent sessions of the great council and by referring all important matters to it for deliberation he assured it a definite place as the forerunner of parliament.

Mention has been made of the fact that the Curia Regis originally concerned itself with both administrative and judicial matters, making no distinction between these two fields of jurisdiction. But in due course it found that work could be expedited and improved by devoting separate sessions to different kinds of business—to the

Summary.

The work of Henry II.

The beginnings of a separation between executive and judicial work.

work of examining the sheriffs' accounts and to hearing appeals from the county courts, for example. Moreover, there developed the practice of sending members of the Curia out into the counties to preside over the county court, thus bringing the judicial authority of this high tribunal closer to the people. At any rate there gradually took place a separation between the administrative and the judicial work of the Curia, and with this came a bifurcation of its membership. One section continued as a permanent royal council, later becoming known as the privy council. The other, confining itself to judicial business, became the parent of the exchequer and the high courts of justice—the court of the king's bench, the court of common pleas, and the court of chancery. It is not to be imagined, however, that this separation took place all at once, or that it can be assigned to any single reign.¹ It came about gradually, by halting steps, and without conscious intent, thus affording us an admirable illustration of the principle of evolution as applied to political institutions.

The evolution of parliament.

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The first enlargement (1213).

Meanwhile a development was taking place in the legislative branch of the government, although one should hasten to explain that no clear distinction between executive and legislative functions was in the mind of the king, the council, or anyone else at this early stage. The king stood in the public imagination as the source of all law, and the sanction of all law. Nevertheless a separation between legislative and executive work, between lawmaking and administration, became inevitable as the great council grew larger in its membership and as its work became more extensive.

This enlargement of the council came with the admission of the lesser landowners, the knights of the shire as they were called. Only the great landowners had previously been summoned to the meetings. But King John, in 1213, directed the sheriffs to send "four good knights" from every county to attend a session of the great council at Oxford. This and subsequent invitations of the same sort were not dictated by any new philosophy of popular representation but by altogether mercenary motives. The king wanted revenue; he desired to levy taxes upon all landed estates of whatever size; and it seemed advisable (for it simplified the work of the royal tax-gatherers) that the new taxes should be approved by a widely representative gathering.

¹ The separation began early in the twelfth century and was not completed until the middle of the fourteenth. Full details are given in J. F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), chap. iii.

Here we encounter, accordingly, the germ of the doctrine that there should be "no taxation without representation." It was not conjured from the brain of Aristotle or any other political philosopher. John Plantagenet, king of England, simply found it easier to tax with representation than without it, and it was his habit to choose the path of least resistance. But he builded better than he knew. He set in process of growth a doctrine that reverberated across the Atlantic five centuries after he passed to his grave.

The power
to tax.

Be it borne in mind, however, that a summons to attend the great council was by no means looked upon as an honor in the thirteenth century; on the contrary it was regarded by great and small landowners alike as an imposition to be evaded if possible. One of the contemporary chroniclers tells us how one gallant cavalier, when his assembled fellow knights sought to choose him by acclaim, put the spurs to his horse and tore off at full speed lest acceptance be wrung from him. The knight of the shire, when elected in response to the royal summons, had to travel to Westminster at his own expense, and travel was costly in those days. From the outlying parts of the kingdom the journey was a matter of weeks. There was neither joy nor emolument in the job. And when the knights arrived at the meeting place of the great council they were merely asked to ratify some new taxes and then sent home again. Nothing could be further from the truth than to imagine that the people of mediæval England, or any part of the people, clamored for representation in the great council of the realm. A summons to send representatives came as the shadow of a new tax cast before them.

What representation meant in the thirteenth century.

Then came Magna Carta, the Great Charter of 1215. This document, by some of its provisions, gave increased definiteness to the organization and powers of the great council. It stipulated that certain specified taxes could not be imposed by the king without the council's approval; it provided that all the great barons should be summoned individually, and all the knights of the shire by writs addressed to the sheriffs. Still, this charter was strongly baronial in tone and it did not require that membership in the great council should be made representative of the people. It assured no representation to the towns. Although schoolboy orators throughout the English-speaking world perennially acclaim Magna Carta as "a great palladium of civil liberty," it was in reality nothing more than a treaty between the king and the barons of England in which the latter got all they could for themselves. Most of its provisions relate

Magna Carta (1215).
✓

to the privileges of the church and the landowners; only a very few have any relation to the rights of the common man. The idea that this charter forms the basis of trial by jury, popular government, and modern democracy in general is one of our most tenacious political myths.

The layman's idea of this document.

There is a well-known picture which often hangs on the walls of American school rooms. It portrays King John, with a worried countenance, a crown on his head, and a quill pen in his hand, affixing his signature to a long scroll which is supposed to contain the provisions of the Great Charter. Behind him is pitched an army-tent of nineteenth-century design, over which is unfurled a royal standard that did not come into use until long after John had been gathered to his fathers. All this is amusingly fantastic, for the reason (among others) that John Plantagenet could not write a single word, not even his own name. Magna Carta was not signed by the king; it was merely assented to by him orally, and sealed with the great seal of the realm and with the individual seals of twenty-five barons who were designated to see that the provisions of the charter were respected. Four documents, each of which professes to be the original, have come down to us. Each differs somewhat in phraseology from the others.¹

Why it is a great landmark of civil liberty.

Yet Magna Carta is properly regarded as a landmark in English constitutional history. It is more than a piece of class legislation wrung from a frightened king by a band of baronial conspirators. For it definitely established the principle that the king, on certain great issues, must consult his council as a matter of law and not as a matter of choice. In other words it set forth a declaration of feudal rights as the barons understood them. It was a recital of what the barons of England looked upon as the constitutional customs of the realm. With this baronial interpretation the people seemed to agree. None of them flocked to the support of the king. They left him to stand alone. So, while the provisions of the great charter guaranteed rights to bishops, barons, and merchants, rather than to the populace, the further extension was bound to follow on. In its resounding Latin, moreover, the charter endowed all free Englishmen with one right which they have never let go, and which their posterity beyond the seas have guarded with unremitting vigilance,—

¹ The best book on the subject is W. S. McKechnie's *Magna Carta* (Glasgow, 1905).

"Nullus liber homo capiatur, vel imprisonetur, aut dissaisiatur, aut outlagetur, aut exultur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ." ¹ (*Article 39*)

But let us get back to the evolution of parliament. The charter of 1215, as has been said, did not require that the great council should be placed upon a representative basis but it was not long before this principle gained acceptance. The advance is commonly associated with the name of Simon de Montfort, Earl of Leicester, who is often called the "Father of the House of Commons," although he has no good claim to this attribute of paternity. What happened, in short, was this: During the reign of Henry III, about fifty years after the signing of the charter, a quarrel between the king and his barons arose over the royal attempt to impose some new taxes; and both sides resorted to arms. The king was defeated, and Simon de Montfort, as leader of the barons, became virtual dictator of the realm although the king was not formally deposed. But a dictator could no more govern without funds than could a king, so Montfort had to solve the problem of finding a great council which would approve a tax levy. In 1265, therefore, he took the step of summoning not only the bishops, barons, and knights of the shire, but two representatives from each of twenty-one English boroughs or towns.

Simon de Montfort's great council (1265).

Montfort was an adventurer, shifty and self-seeking. His action in extending the basis of representation in the great council (or parliament as it was now beginning to be called) was not inspired by any allegiance to the principles of democracy.² He needed money. His hold on the barons was weakening. The towns were growing in population and wealth. He wanted their support—and their financial contributions. Hence his desire to draw them into the orbit of national taxation. Simon of Leicester had the instincts of a modern political boss, however, and he restricted his summons to those towns which he believed were favorable to him. Only twenty-one handpicked boroughs were represented.

Montfort's motives.

¹ No free man shall be held in duress, or imprisoned, or dispossessed of his land, or outlawed, or exiled, or in any other way harassed, nor will we impose upon him, nor send him our commands, save by the lawful judgment of his peers or by the law of the land.

² The term "parliament" was vaguely and loosely used until 1295 or even later. Matthew of Paris speaks of a *magnum parlamentum* in 1257 [Stubbs, *Select Charters* (Oxford, 1900), pp. 330–331] and the Annals of Winchester refer to a *parlamentum omnium magnatum* in 1270 (*Ibid.*, p. 337). The Rolls of Parliament begin with the year 1278, but they do not cover all the meetings until the end of the century.

The model
parliament
(1295).

So Montfort's parliament of 1265, with its earls, barons, bishops, knights, and townsmen, was not a national parliament but rather a party convention—a packed convention at that. And when Montfort was ousted from his dictatorship a little later, the practice of summoning representatives from the towns was discontinued. Sessions of parliament were held from time to time during the next thirty years—with no borough representatives present. Then, in 1295, Edward I summoned them once more. He was waging a war and needed money from all elements, the church, the barons, the knights, and the towns. Hence Edward brought together what has come to be known in English history as the "model parliament" of 1295. It was a large body, a parliament in the true sense.¹ It met as a single chamber but voted its taxes by three divisions or "estates," in other words the clergy, the barons and the knights, and the townsmen each voted separately. Each group was called into the presence of the king and his council. There they listened to his plea for money and gave assent—by their silence. They did not sit; being in the presence of the king, they stood. The session did not last long, just long enough to unloose the purse strings.

The "three
estates" in
parliament.

In several subsequent parliaments the "three estates" met and voted separately, but this three-chamber arrangement never became a fixed parliamentary practice. Instead there took place a coalescence which eventually made parliament a bicameral body. The higher clergy and the great barons drew together, for they had interests in common. Both were large landowners; both were summoned to parliament by individual writs and hence were members of it by tenure, not by election. On the other hand, a similar identity of interest drew together the knights of the shire and the townsmen, for both were present in a representative capacity.

Separation
of the two
Houses.

Thus was accomplished the moulding of parliament into two chambers, which came to be known as the House of Lords and the House of Commons. The process of bifurcation moved slowly and was not completed for at least a hundred years. It was an important step, one of the most significant in the entire history of government, for it started the bicameral system on its way around the world. No one planned or guided this separation and coalescence; it was merely

¹ It included two archbishops, eighteen bishops, sixty-six abbots, three heads of religious orders, nine earls, forty-one barons, sixty-one knights of the shire, and one hundred and seventy-two representatives from the towns.

the natural working out of the social forces of the age. Regarded as of little or no consequence in the earlier centuries, this division of the English parliament into two chambers gave it a frame that has been transmitted to every other great legislative body on earth.¹

It has been said that the knights and the townsmen were present as representatives; but how and by whom were they elected? The knights of the shire were chosen in the county court, which was in effect a county council. Any landowner, whether he had attained the rank of knighthood or not, was eligible. The burgesses or representatives from the boroughs were chosen by the freemen of these towns at meetings called for the purpose. As a matter of practice the elections were decided by a relatively few landowners in each shire and by the leading citizens of each parliamentary borough. Voting was by a show of hands and rarely was there a contest. More often it was a matter of persuading someone to go.

The methods by which knights and burgesses were elected.

Being a member of the House of Commons in mediæval England brought neither profit nor honor nor authority. The commoners were regarded as of no account, save for their assent to the granting of funds. In the great hall at Westminster, where parliament assembled, the bishops and barons sat in front of a throne which the king occupied, his chancellor and other officials flanking him on either side. Below and beyond the bar of the house, at the opposite end from the throne, stood the knights of the shire and the burgesses. Their presence was not essential to a quorum. The king, through his chancellor, presented the immediate business in hand, whereupon the commoners retired to the refectory of the building and "debated" the matter. Having chosen a spokesman or speaker they trooped back into the hall and this speaker, with profuse expressions of loyalty to the crown, announced the result of their deliberations. That was the extent of their share in the work of parliament.

What they did after they were elected.

One should not make the error of thinking that parliament in the fourteenth century was primarily a lawmaking body. The king made the laws with the assent of the lords, spiritual and temporal. The commoners merely presented petitions and assented to the levy of taxes. The bishops and barons far outweighed them in influence. But the commoners gradually began to gain authority.

The earliest powers of parliament.

¹ We are accustomed to think of the two-chamber system as having been universal from the outset. But the Scottish parliamentary system developed a single chamber; the French developed three estates; and in Sweden the early parliaments had four houses.

1. To vote taxes.

2. To present petitions.

3. To share in making the laws.

England's government at the beginning of the modern epoch.

They acquired, in due course, the right to be *first* considered in money matters. Their possession of this financial initiative was shown in 1407 when the king agreed that all grants of taxes should be first made by the commoners and then assented to by the lords.

The right of presenting petitions likewise became the basis of an actual share in the making of laws. For it naturally happened that many individual petitions related to the same grievance. In such cases it became the custom to merge them into a common petition, a collective petition presented by the house as a whole. Such a petition came to be known as an "address to the throne," that is, a united request for royal action. In the fourteenth century the king made the laws *with the assent* of the lords, *at the request* of the commons; in the fifteenth century he found himself making them "by and with the advice" of both. It was in this way, slowly and almost imperceptibly, that the commoners acquired an actual share in the making of the laws. During the Wars of the Roses, which covered a considerable portion of the fifteenth century, the commoners gained on the lords because the latter devoted so much of their attention to quarrelling among themselves. These wars were chiefly waged by noblemen and their retainers; the towns took little part in the struggle. Before they were over the majority of the barons had been killed off and their titles extinguished. New noblemen were created, of course, but they did not have the prestige of the older families.

Still, the House of Commons was the weaker of the two chambers even in the days of Henry VIII and Elizabeth. The crown remained the pivotal point in the government and looked mainly to the lords for advice in lawmaking. When the commoners showed themselves obstinate the monarch did not disdain to use threats and coercion. Henry VIII, for example, warned them on one occasion that unless certain measures were passed, he would send a batch of commoners to the gallows. Elizabeth sent two members of the Commons to prison for their persistence in advocating legislative proposals which were distasteful to her. The House contained at this time about three hundred members elected by the freeholders in the counties and the freemen of the towns.¹ Elections were held irregularly, for there was no requirement by law or custom that

¹ A freeholder was one who owned land with an estimated rental-value of forty shillings per annum or more. A freeman was anyone who possessed the "freedom of the town." Originally a considerable percentage of the adult male residents were freemen but as time went on the category was narrowed.

they should be held on stated dates. When the king wanted money he called an election. Then, if the House of Commons proved complaisant, he continued it in existence for several years; otherwise he dissolved it speedily. Sessions were brief; they usually lasted only a few days or at most a few weeks. In the reign of Henry VIII nine parliaments were elected. One sat for seven years; two sat for three years each; the other six were quickly dissolved. Queen Elizabeth summoned parliament more regularly and (outwardly at least) accepted its action on many important matters.

Soon after the death of Elizabeth, however, this waxing strength of parliamentary government was put to a severe test. Leaving no nearer relatives, Elizabeth passed the English throne to her cousin, James Stuart of Scotland, who in 1603 was crowned king of England as James I. He claimed to rule by divine right and laid great stress upon his royal prerogatives. This insistence, of course, soon precipitated a conflict with the House of Commons, the immediate issue being the right of the crown to lay certain taxes without the consent of parliament.¹ But matters did not come to an open rupture, for the king was careful not to press his doctrines too far. When James could not get laws, he resorted to ordinances.²

The crown and parliament under the Stuarts.

His son and successor, Charles I, was neither so cautious nor so fortunate. Surrounding himself with rash, self-confident, and unwise counsellors, he soon brought his relations with parliament to a critical state. In 1628 both Houses united in presenting to Charles the famous Petition of Right which definitely asserted the principle that no man should be compelled to make or yield any gift, loan, benevolence, or tax without the consent of parliament. The king, under pressure, assented to the Petition, but he did not keep his word. Various old impositions, such as ship-money, were revived and levied without parliamentary authority. When parliament reiterated its protest the king sent the members home and for eleven years ruled the kingdom without calling a parliament at all. England was on the verge of despotism and only managed to escape it by launching the Great Rebellion. On the eve of hostilities Charles hastily summoned a new parliament but it proved no more amenable

The open breach.

¹ The crown did not question parliament's right to control ordinary taxes but held that certain special levies called impositions (additional customs duties) were within the royal prerogative.

² Laws were enacted by the king in parliament; ordinances were issued by the king alone. It is significant that in the King James version of the English Bible (*Exodus* xviii. 20) the translators wrote "And thou shalt teach them ordinances and laws." They placed ordinances first.

than its predecessors. It adopted the Grand Remonstrance of 1641 which was in effect an appeal to the people against the crown.

The Great
Rebellion
and the
Common-
wealth.

In the early stages of the rebellion the king's forces had the advantage but eventually Oliver Cromwell succeeded in reorganizing the parliamentary army and gaining the upper hand. The king took refuge with the Scots army which delivered him into the hands of parliament. After prolonged negotiations he was put on trial, condemned, and executed (1649). Thereupon great governmental changes came in quick succession, the monarchy and the House of Lords were abolished; a commonwealth was proclaimed; a written constitution known as the *Instrument of Government* was adopted, and Cromwell was named Lord Protector of the British Commonwealth. But he, no less than his royal predecessor, found the House of Commons a difficult body to deal with and the Instrument of Government failed to take root.¹ It became increasingly unpopular with the people and was only maintained in operation by the personal genius of Cromwell. The Lord Protector died in 1658, having named his son, Richard, to be his successor; but Richard speedily abdicated and in 1660 the monarchy was restored.

The Stuart
restoration
(1660) and
the abdica-
tion of
James II
(1688).

The restoration of the Stuart dynasty indicated the strength which the monarchical tradition had acquired in Britain. The old grievances were for the moment forgotten. It was assumed that Charles II, the new king, would adopt the principle of parliamentary supremacy, and in form he did so. During the twenty-five years of his reign he had several conflicts with parliament but never risked his throne. His brother, James II, who succeeded to the throne in 1685, was not so fortunate. James Stuart was a headstrong, intolerant individual, with narrow views and no imagination. Moreover, he was unfortunate in the choice of his advisers. Within a short time after his accession he quarrelled with parliament over the right to exercise his "dispensing power" as it was called, that is, the right to suspend the operation of certain laws. This drove the parliamentary leaders to the plan of bringing in a new monarch. William, Prince of Orange, was therefore invited to aid in "protecting the constitutional liberties of the realm" and the result was the

¹ In 1656, when the House endeavored to assert its right to control the militia, Cromwell appeared on the floor, gave the members a scathing rebuke, dissolved the House, and sent them home. And when a new parliament was elected he saw to it that no members opposed to him were admitted to the House. Subsequently, however, they were permitted to take their seats and trouble again resulted, with the same outcome—another dissolution.

Revolution of 1688. Finding himself deserted by all parties, James fled to France and the Stuart monarchy came to an end.

While this struggle between the crown and parliament was going on there took place a strengthening of the king's council, now officially known as the privy council. It became a large body, including at one stage as many as forty members. Its functions were still called advisory, but they were in reality much more than that. It virtually exercised some of the king's prerogatives for him. Through its committees or boards, and by means of orders-in-council, it regulated trade, supervised the administration of justice, took control of finance, and left no department of the government outside its ceaseless supervision. Its right to issue orders or ordinances with the force of law made it in some ways a legislative body more influential than parliament itself.

Develop-
ment of the
privy coun-
cil.

It was the theory of the government that the king should be guided by the advice of his privy council. But when this body had become large and did most of its work through committees it could no longer perform this advisory function to the king's taste. In the public mind its unwieldiness and inefficiency were held responsible for some English naval reverses at this time. So Charles II adopted the plan of forming a "cabal"¹ or inner circle of privy councillors to advise him on all important and confidential matters. This action was much resented by the other councillors, and the practice was temporarily abandoned, but it was soon resumed and became the forerunner of the cabinet system.

The cabal
of 1667.

As a result of the Revolution, William and Mary became joint monarchs of Great Britain in 1689. In order that there might be no recurrence of friction between the crown and parliament the latter drew up and adopted a document known as the Bill of Rights. This document, while it did not profess to be a constitution in the ordinary sense of the term, set forth the basic principles of English government as they were understood by parliament at the time. Enumerating the various issues which had arisen between the king and his people it proclaimed the legislative supremacy of parliament, denied the authority of the crown to levy any tax or impost without parliamentary consent, insisted that parliament should be regularly called, and set forth a list of individual liberties which were not to be infringed. The Bill of Rights, accordingly, marks the culminating

The Bill of
Rights
(1689).
✓

¹ The word was formed by using the initial letters from the names of its first members—Clifford, Ashley, Buckingham, Arlington, and Lauderdale.

stage in the evolution of the fundamentals. The outlines of the British constitution were now practically complete; nothing remained but to fill in the details and to elaborate the machinery of administration. Britain had become a limited monarchy. Parliament had gained a mastery over the royal prerogatives. It was in a position to control the ministers of the crown even though the principle of ministerial responsibility had not as yet become established in its present form. The changes that have taken place in the British government since 1689 have not altered its general outlines.

Constitutional changes since 1689:

But although there has been no reconstruction of the framework, some notable changes have taken place in the practical workings of English government. The most significant among these are (a) the continued narrowing of the monarch's actual powers, (b) the rise of the cabinet and the fixing of its responsibility to parliament, (c) the democratization of the House of Commons, (d) the reduction in the powers of the House of Lords, and (e) the growth of the party system.

1. The diminished powers of the monarch.

Although the Bill of Rights asserted the legislative supremacy of parliament it did not deny to the crown an essential share in legislation. William and Mary made themselves real factors in the conduct of the government and chose their ministers without deference to the will of parliament. But their successors, George I and George II, were Hanoverians by birth and allegiance, with little or no interest in English affairs. They could not speak the English language, hence it was useless for them to attend meetings of their ministers. They neither understood their prerogatives nor cared to assert them. If England would only further the ambitions of their beloved Hanover in continental politics they were willing to let parliament have its way. So they chose advisers who were acceptable to the House of Commons, and let the House control them. George III, when he came to the throne, made a brave attempt to revive some of the royal influence which his father and grandfather had relinquished, but it was too late. Parliament had taken the reins and was determined to keep them.

2. The evolution of the cabinet.

With the decline in the personal authority of the king came a rise in the power of his ministers. It is often said that the cabal of Charles II's reign was the progenitor of the present-day cabinet, and in a sense it was; but the real reason for the cabinet's rise to power was the necessity of providing a channel through which the

newly-asserted supremacy of parliament over the king could be exercised. It was soon discovered that things went along with much less friction when the members of the cabinet were chosen from among those members of the privy council who belonged to the dominant party (Whig or Tory) in the House of Commons. No statute or resolution of parliament forced the king to restrict his choice to members of the majority group; it was merely the logical thing to do. A king was sure to get himself into trouble by selecting a prime minister who could not control parliament; it was easy to avoid trouble by selecting a prime minister who could. Sir Robert Walpole was the first royal adviser to whom the term prime minister can properly be applied. He held office at the will of parliament. When he resigned in 1742 because of an adverse vote in the House of Commons he established a precedent which is perhaps the most important of all provisions in the unwritten constitution of his country.

The democratization of English government is a third feature of the past two centuries. The House of Commons two hundred years ago was a representative body in form and an unrepresentative body in fact. It did not represent the people of Great Britain or reflect public opinion upon matters of national policy. This situation was due to the gradual narrowing of the parliamentary suffrage and to the fact that although the population had been greatly shifted by the rise of the factory system and the decline of agriculture there had been no redistricting of the country for election purposes. The Reform Act of 1832 changed all this. It liberalized the suffrage and in some degree adjusted representation to population. It made the House of Commons a representative body in fact as in name, thereby enhancing its strength and prestige. Other reform acts have followed at intervals, the last of them in 1918.

The fourth important change relates to the powers of the House of Lords. These have had to be curtailed. From time to time, especially during the closing decades of the nineteenth century, the Lords and Commons came into collision and the former were able to prevent the enactment of measures which the Commons had passed by large majorities. These conflicts engendered much political bitterness and gave impetus to a movement for curbing the authority of the upper chamber. But not until 1911 did this movement come to a head. The immediate occasion was the action of the Lords in rejecting a finance bill which the Commons was

3. The democratization of the Commons.

4. The reduction in the powers of the Lords

determined to place on the statute book. The Commons then decided that never again should the hereditary chamber be in a position to balk its will, and to that end the Parliament Act was put through both Houses, the Lords assenting to it under a threat that if they did not do so the upper House would be swamped by a wholesale creation of new peers. The Parliament Act definitely settled the supremacy of the Commons in all cases of disagreement.

5. Rise of
the party
system.

Finally, the actual workings of British government have been greatly influenced, during the past two centuries, by the rise of political parties. We have now grown so accustomed to party organizations, party programs, and party activities that it is difficult to visualize a system of representative government without them. There were political "factions" in English history long before 1689—Lancastrians and Yorkists, Cavaliers and Roundheads, Petitioners and Abhorrrers; but they were not political parties in the modern sense. None of them ever conceded that its opponents had any right to exist. When one faction gained control of the government its patriotic duty was to harry the other faction out of the land. It was not until after 1689 that Englishmen reconciled themselves to the idea that men could be opposed to the existing government without being enemies of the state. Men could be "in opposition" without being rebels. Indeed, it slowly came to be realized that a strong opposition in parliament was a wholesome spur to efficient administration because it put the ministry on its mettle. So the nineteenth century witnessed a general acceptance of the party system with all its implications. The minority in parliament were no longer known as the king's enemies but as "His Majesty's loyal opposition." The insertion of the term *loyal* in this phrase is of great significance. It points to the most important change that has been wrought in the spirit of English parliamentary institutions during the past two hundred years.

Other constitutional
developments during
the past two centuries.

Now the foregoing are not the only changes that have come into the practice of British government since the days of George III and the American Revolution. Scotland entered into a parliamentary union with England in 1707. Ireland was drawn into this union in 1800, but went out of it in 1922 when a new status for Southern Ireland was created. Meanwhile a great overseas empire was built up, consisting of many dominions, colonies, and protectorates. The relations of these various territories with the mother country have been gradually determined, partly by law and partly by usage. The

relations between Britain and India have also been altered and recast, especially during recent years. All this, and a great deal more, has been accomplished without any radical reconstruction of the government at home. The essentials of the British constitution have undergone no fundamental change by reason of this transformation from a small kingdom of about twenty million people into a world empire of nearly four hundred millions. But the details have been modified, the spirit of administration has considerably changed, and new needs have been met by alterations in the governmental mechanism. England, like America, has been adapting an eighteenth-century constitution to twentieth-century conditions.

There is no end of material on the subject of the foregoing chapter. For the American student the most useful brief survey is the *Outline Sketch of English Constitutional History* by George Burton Adams (New Haven, 1918). A. B. White, *The Making of the English Constitution* (New York, 1908), covers the period to 1485. A still more comprehensive but not altogether reliable work is Hannis Taylor, *Origin and Growth of the English Constitution* (2 vols., Boston, 1898).

Those who wish to delve more deeply into the subject will find satisfaction in Charles Oman, *England before the Norman Conquest* (London, 1910); H. W. C. Davis, *England under the Normans and Angevins* (Oxford, 1905); T. F. Tout, *History of England from the Accession of Henry III to the Death of Edward III* (London, 1925); William Stubbs, *Constitutional History of England* (6th edition, 3 vols., Oxford, 1903); Sir Frederick Pollock and F. W. Maitland, *History of English Law* (2 vols., Cambridge 1898); A. F. Pollard, *History of England from the Accession of Edward VI to the Death of Elizabeth* (London, 1910); Spencer Walpole, *History of England* (6 vols., New York, 1902-1905); and Sir Thomas Erskine May and Sir Thomas Holland, *Constitutional History of England* (new edition, 3 vols., London, 1912). The best single volume on the development of parliament is A. F. Pollard, *The Evolution of Parliament* (London, 1920), but a longer and older work, G. B. Smith, *History of the English Parliament* (2 vols., London, 1892) is still useful. Special mention should be made of G. B. Adams, *Councils and Courts in Anglo-Norman England* (New Haven, 1926); H. J. Robinson, *The Power of the Purse* (London, 1928); and C. H. McIlwain, *The High Court of Parliament* (New Haven, 1910).

On the development of the privy council and the cabinet further discussions may be conveniently found in J. F. Baldwin, *The King's Council in England during the Middle Ages* (New York, 1913); E. R. Turner, *The*

Privy Council of England in the Seventeenth and Eighteenth Centuries (Baltimore, 1927); E. Percy, *The Privy Council under the Tudors* (Oxford, 1907); A. Fitzroy, *The History of the Privy Council* (London, 1928); T. F. Tout, *Chapters in the Administrative History of Mediæval England* (Manchester, 1920); A. V. Dicey, *The Privy Council* (Oxford, 1887); R. H. Gretton, *The King's Government* (London, 1913); and Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902).

The more important documents in English constitutional history may be found in William Stubbs, *Select Charters and Other Illustrations of English Constitutional History* (9th edition, Oxford, 1913), which covers the period to about 1300; G. W. Prothero's *Select Statutes and Other Constitutional Documents* (4th edition, Oxford, 1913) (covering the reigns of Elizabeth and James I), and S. R. Gardiner's *Constitutional Documents of the Puritan Revolution* (which deals with the period 1625-1660). C. G. Robertson, *Select Statutes, Cases and Documents to Illustrate English Constitutional History* (London, 1904) covers the later period. A volume of *Select Documents* by G. B. Adams and H. M. Stephens (New York, 1918), covers in a more general way the entire period.

For judicial decisions affecting the development of the British constitution reference may be made to D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (Oxford, 1928), and to B. A. Bicknell, *Cases on the Law of the Constitution* (London, 1926).

CHAPTER III

THE CROWN

Lex facit regem: what power the king hath, he hath it by law; the bounds and limits of it are known.—*Richard Hooker* (1594).

"Who rules England?" once asked a Stuart satirist. "The king rules England, of course." "But who rules the king?" "The duke." "Who rules the duke?" "The devil." Nowadays it is the crown, not the king, that rules England, and rules by the advice of the prime minister, who in turn is bedeviled by the caprice of the House of Commons. There are many subtle distinctions in the vernacular of British government but none more vital, as Gladstone once remarked, than the distinction between the king and the crown, between the monarch as a person and monarchy as an institution.¹ There is a world of difference between the two, yet it is often overlooked even by Englishmen themselves. In everyday speech they attribute to their king as an individual many prerogatives which belong to the office that he holds. These prerogatives do not in fact belong to George V, but to an abstraction known as "the crown," of which the king is merely the physical embodiment. It might just as well be called The Consent of the Governed, or The Will of the People.

The king
and the
crown.

The whole development of the British constitution, in fact, has been marked by a steady transfer of powers and prerogatives from the king as a reality to the crown as a concept. Parliament has left the personal status of the king untouched; he has always been and still is above the law; but parliament has enchained the crown and has bound it to definite modes of procedure. By this process the official acts of the king have been brought within control of the laws and customs of the realm. This gradual establishment of parliamentary control over the royal prerogative covered a long period; it began with Magna Carta or earlier, and was not fully completed until well into the nineteenth century. The issue, indeed, was much in doubt prior to the expulsion of James II, but at that point the crisis passed. The Revolution of 1688 involved more than the substitution of one king for another. It marked a very important

The transfer of power
from the
one to the
other.

¹ *Gleanings from Past Years* (7 vols., London, 1879), vol. I, p. 234.

stage in the transfer of political functions from a personality to an institution.

The immortality of the crown.

The distinction between the king and the crown is reflected in the cry that: "The king is dead; long live the king!" What this announcement of a royal demise really means is: "The king is dead; long live the crown; long live the office which one monarch has passed on to another." The death of a king makes no more difference in the powers and duties of the crown than takes place when one president of a republic replaces another. The crown is an artificial or juristic person; it is not incarnate, and it never dies. The powers, functions, and prerogatives of the crown are not suspended by the death of a king, even for a single moment.

Importance of the distinction between the king and the crown.

Now if this distinction be kept in mind it will serve to clarify much that is puzzling to the foreign student of British political institutions. One reads in the textbooks on English government that the crown has extensive powers, that it is the fountain of justice and the chief executive of the realm, that it appoints all civil officers, commands the army and navy, makes treaties, pardons criminals, summons and dissolves parliament and does all manner of great things—which is quite true, inasmuch as the crown is the agency through which all these things are done. But in the very same pages one also reads that the king has long ceased to be a directing factor in government, that he can perform virtually no official act on his own authority, that he is merely a symbol of the nation's unity—all of which is likewise true. These statements appear to be widely at variance, but they are easy to reconcile when it is pointed out that the powers which appertain to the crown are not exercised by the king of his own volition but at the behest of those who express the will of the people.

Legal rights and actual powers.

Fifty years ago that brilliant writer on English government, Walter Bagehot, contributed a good deal to the mystification of foreign students when he asserted in a series of machine-gun phrases that "without consulting parliament" Queen Victoria could disband the British army, sell off the navy, begin a war, give away British territory, make every British subject a peer, dismiss the officers of government, pardon every criminal in the realm, and do all manner of astoundingly despotic things.¹ According to the letter of the constitution Bagehot was correct. The queen had a "constitu-

¹ *The English Constitution*. Introduction to the second edition (London, 1872), p. xxxviii.

tional" right to do all of these things, but as a matter of actuality she could not have done a single one of them without abdicating the next morning. If one is speaking of the facts, and not of legal fictions, the way to express it accurately is to say that the crown, on the advice of the ministry, may do these various things provided the ministry has the confidence of the House of Commons which represents the will of the people. In other words the will of the nation is supreme in England as in every other country which maintains a democratic system of government. Whether this national will is made effective through ministers acting in the name of the crown as in England, or through ministers acting in the name of the state as in France, does not make a vast amount of difference. The essential thing is that official action is controlled by the consent of the governed.

During the past ten centuries England has had forty-nine monarchs, so that the average reign has been about twenty years. Of these rulers all except four have been men. The longest reign was that of Queen Victoria, sixty-four years, while the shortest was that of Edward V, a few months in 1483. For only eleven years in all her history has England been without a titular monarch, namely, during the interlude of the Puritan Revolution.

Kings and
queens.

The British crown is an hereditary institution which parliament regulates by rules of succession. The existing rules of succession were established by it in 1701. Briefly they provide that the crown shall descend in perpetuity through the heirs of the Princess Sophia of Hanover, who was a granddaughter of King James I. Hence the present royal family was commonly designated, until 1914, as the House of Saxe-Coburg. Then, in the flood tide of anti-Teutonic feeling, it was changed to the House of Windsor. Stipulation is made in the rules of succession that only Protestants are eligible. Until 1910 each monarch, at his or her coronation, was required to take an oath abjuring the doctrines of the Roman Catholic church; but this has now been replaced by a declaration that the monarch is "a faithful Protestant," all reference to any other religious affiliation being omitted. The title borne by the British monarch at the present time is as follows: George, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King; Emperor of India, Defender of the Faith.

The suc-
cession to the
crown.

By usage the crown descends according to the principle of primogeniture, that is to say, elder sons are preferred to younger.

Usages re-
lating to the
succession.

Female heirs do not succeed to the throne unless male heirs are lacking.¹ In default of all heirs, male or female, parliament would have to provide for a new dynasty by amending the rules of succession. The eldest surviving son of a reigning monarch bears the title Prince of Wales, but this does not imply any governmental connection with Wales, nor does it endow him with any political authority over that portion of Great Britain.

Regencies.

The accession of a new king is customarily followed by a coronation; but this ceremony has no legal significance.² It adds nothing to the authority vested in the crown. If the succession passes to a prince or princess who is under eighteen years of age a regency must be established by action of parliament, but there are no fixed rules relating to the choice of a regent. Each case is dealt with as it arises. Ordinarily some adult relative of the young king or queen is named. The same course would be taken in case a ruling monarch becomes physically or mentally incapacitated. There has been no occasion for the establishment of a regency in Britain during the past hundred years.

The special commission.

In connection with the matter of establishing a regency, however, an interesting constitutional problem arises. To establish a regency requires an act of parliament, and an act of parliament requires the royal assent. But if the king is incapable of performing the functions of the crown, how can this assent be obtained? This problem arose many years ago and was solved in a way which shows how far the powers of parliament can be extended. For parliament quickly unravelled the problem by authorizing the appointment of a special commission with the sole function of giving the crown's assent to the regency act.

The British king is now supported by the national treasury, but

¹ There is, of course, an important legal distinction between a queen who succeeds to the crown in her own right, and a queen who gains her title by being the wife of a king. The former exercises the prerogatives of the crown; the latter does not. The husband of a queen who reigns in her own right does not bear the title king. Queen Victoria's husband was given the title Prince Consort.

² The chair or throne used at the coronation of every British monarch since the time of Edward I (1272-1307) is a homely affair with a large stone encased beneath the seat. The tradition is, and many Englishmen believe it, that this is the identical stone on which the patriarch Jacob pillowed his head at Bethel. According to the legend the stone was carried into Egypt by the sons of Jacob, taken thence to Spain and later to Ireland where it was placed upon Tara Hill. Finally it was brought across to Scotland and deposited in the Abbey of Scone whence Edward I took it to England in 1297. Geologists who have examined the stone assert, however, that it is a piece of Scottish sandstone and could not have come out of any geological formation found in Palestine.

it was not always so. In the early stages of the English monarchy it was the understanding that "the king should live of his own"—in other words pay his own way. The Norman and Plantagenet kings were great feudal landowners and derived large revenues from their estates. Out of this income they were expected to defray all their personal expenses, including the maintenance of the royal courts. They were even expected to provide for the ordinary expenses of the nation. Everything in the way of a national levy was frowned upon in early days unless there was some special occasion for it, such as a war; and even then there was a good deal of grumbling. But as the national expenditures grew larger it became the custom to call upon parliament for special grants. These grants, of course, gradually became bigger and more frequent.

The financial support of the crown.

The earlier practice.

Until 1689, however, no distinction was made between funds granted for the monarch's personal use and those appropriated for public purposes. Then began the practice of making such a separation which gradually became clear and complete. So parliament now fixes, at the accession of each new king, an annual sum to be paid from the national treasury for the support of the ruling monarch and the immediate members of the royal family.¹ This grant is known as the Civil List; it is made partly for specific purposes and partly in a lump sum which the monarch can spend as he pleases. At present it amounts to £470,000, or more than two million dollars per annum.

The Civil List.

Originally the powers of the crown were deemed to be "prerogatives" which inhered in the person of the monarch. They had not been conferred upon him by action of parliament or of any other body. Some of the crown's authority at the present day represents a survival of this prerogative, but most of it has been accumulated by usage or conferred by positive action of parliament. Parliament has bestowed powers on the crown from time to time; it has also taken others away. A few prerogatives of the crown have been lost by long disuse. In a word, therefore, the powers of the crown

Powers of the crown—their origin.

¹ This does not mean, however, that the monarch has no personal income. On the contrary the British king, as an individual, has a very large income apart from the annual sum paid to him by parliament—how large is known only to himself, for he is under no obligation to disclose it to anybody. As Duke of Lancaster, moreover, the king still enjoys the revenues of that ancient duchy. These revenues have never been surrendered to parliament and are in addition to the allowances granted in the Civil List. The Prince of Wales, as eldest son of the monarch, is Duke of Cornwall, and receives for his own use the revenues of the Duchy of Cornwall. These revenues are now so large that the Civil List contains no separate provision for the Prince of Wales.

are merely those which parliament permits it to have and to hold.

The royal prerogatives.

Some writers on the British constitution have drawn a distinction between the *prerogatives* of the crown, and the *powers* of the crown, but the difference is of no practical importance because there is no authority vested in the crown, howsoever derived, which parliament cannot take away if it chooses. So whether a certain function of the crown harks back to the days of royal absolutism, or has evolved in the process of constitutional development, is a matter of purely antiquarian interest. The all-important fact is that the crown, in all that it does, serves as the executive agent of the British people and is under the control of parliament.

Separation of powers according to Montesquieu.

More than a hundred and fifty years ago, when Montesquieu enunciated his doctrine of division of powers, he conceived himself to be setting forth a principle which was exemplified in the government of Great Britain. The extinction of free government in France he believed to be a logical outcome of the fact that all governmental authority—legislative, executive, and judicial—was concentrated in the same hand. The Bourbon kings of France promulgated decrees with the force of law, carried these decrees into operation, and assumed the right to condemn offenders. This fusion of powers seemed fatal to the growth of free institutions, hence Montesquieu admired the success of Britain in keeping them separate.

His error.

But he was wrong. He was misled by superficial appearances. The making of the laws seemed to be vested in parliament alone, while the execution of the laws appeared to be an independent function of the crown, thus establishing a clean-cut separation. The truth is that both the making and the execution of the laws were under the control of parliament even in Montesquieu's time. The authority of the crown in England is a delegated authority—delegated by parliament to a body of agents known as ministers, whose decisions are announced in the name of the crown. The British constitution has never recognized the principle of separation of powers save in one respect, namely, in the exceptional tenure which is given to the judges, who can only be removed on an address presented to the crown by both Houses of Parliament. The idea that the executive and legislative branches of the government should be a check and balance to one another is an Americanism and has never gained any hold in Europe.

But the crown is not only the chief executive in the British scheme of government. It is an integral part of the national legislature as well. Or, as the official designation goes, it is one of the "estates of the realm." Its assent is required in the making of laws. The crown is likewise the fountain of justice and the dispenser of pardons. Thus it forms a part of the executive, legislative, and judicial mechanism.

The crown is a part of parliament.

All this crops out in the nomenclature of British administration. Arrests are made in His Majesty's name. Criminal cases are listed in the courts as *Rex versus* So-and-So. In his public utterances the king speaks of "my government," "my ministers," "my ambassadors," and "my people." Britishers call themselves subjects of the king—not citizens of Great Britain. These expressions, however, are merely the survivals of ancient usage; they do not point to the exercise of any personal authority on His Majesty's part. The substance of power has departed, leaving only the shadows behind. Yet the persistence of this fiction of royal supremacy is not without value. In the public imagination it has a unifying, dignifying, and stabilizing influence. Englishmen agree that it exerts a psychological influence in moderating the bitterness of partisan feeling. For, after all, it is His Majesty's government that is ruling the country,—not a Conservative government, or a Liberal government, or a Labor government. And it is His Majesty's opposition that sits on the other side of the House. It is allegiance to His Majesty that binds all British subjects together. It is His Majesty who forms the focus of all British national power and pride. Phrases and symbols have a more subtle and far-reaching influence on government than we sometimes suspect.

This is illustrated by the nomenclature of government.

Down to the close of Charles I's unhappy reign, it was contended by the monarchists that the king had inherent legislative power, that he possessed the right to issue decrees without the concurrence of parliament. These enactments were known as ordinances. But the right to issue ordinances has long since been lost. Orders-in-council are still issued by the crown, but such orders do not, for the most part, have any legal force unless authorized by some act of parliament.

The crown's part in legislation.

So it is with the enactment of statutes. Ostensibly they are the handiwork of the king in parliament. This is indicated by the wording of the preamble which is affixed to every act of parliament, to wit, that the statute is enacted "by the King's most Excellent

Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same."¹ No act of parliament, moreover, can go into force without the assent of the crown. But this assent is never denied; it is always given as a matter of course.

Functions
in relation
to parlia-
ment:

1. The
crown sum-
mons, pro-
rogues and
dissolves
parliament.

2. The fic-
tion and the
facts.

3. The as-
sent to laws.

The crown takes the initiative in summoning parliament, subject to the requirement that the summons must be given at least once a year. There is no law which requires parliament to be brought together once a year, but if it were not so summoned certain annual acts would expire. This would leave the nation without army regulations, without revenue from the income tax, without appropriations to carry on the government, and otherwise in a predicament. The crown also prorogues parliament at the end of each session, and dissolves it when the time comes for a general election. When a new parliament meets it is usually greeted by the monarch in a speech from the throne.

But the king as an individual has no discretion in the performance of these functions. The ministers determine when parliament shall be called together, when it shall be prorogued, and when dissolved. Even the speech from the throne is written by the prime minister and put into the monarch's hands to be read. It expresses the views and opinions of the cabinet, not those of the king. Having delivered his speech from the throne the king withdraws, and does not again appear in parliament during the rest of its session. In the early stages of parliamentary development the kings of England actually presided at the sessions, but for more than two hundred years no monarch has attended a meeting of parliament, even as a spectator, except on the opening and closing days, and not always even then.

When measures have been passed by parliament they are laid before the king for his assent. This royal assent may be given by him in person or he may authorize certain commissioners, members of the House of Lords, to "declare and notify his royal assent" for him. That is what he does nowadays. The assent is not given by signing the measures as is done by the President of the United States. The practice is for an official known as the clerk of the crown to read out the titles of the bills which have been passed,

¹ When a statute is enacted by the House of Commons alone, under authority of the Parliament Act of 1911, the reference to the advice and consent of the "Lords Spiritual and Temporal" is omitted.

whereupon another official, known as the clerk of the parliaments, solemnly pronounces a phrase in the old French of Plantagenet days, while the lords commissioners look on in silence.

Ordinary public bills are assented to with the words "Le Roy le veult." Appropriation bills receive the benediction "Le Roy remercie ses bon sujets, accepte leur b n volence, et ainsi le veult." Private bills are assented to with the declaration "Soit fait comme il est d sir ." In the old days, when the king decided to withhold his assent from a bill, he merely promised (like a modern politician) that "Le Roy s'avisera"; but not for more than two hundred years has any English monarch or clerk of the parliaments greeted a measure with these procrastinating words.

"The king wills it."

From time to time an official known as the clerk of the crown makes a list of the bills which have passed both Houses. This list gives the title of each bill only. Then the king issues a document, bearing the royal sign manual and the great seal of the realm, which authorizes a commission of five persons to go through the form of assenting to these bills on His Majesty's behalf. These commissioners are almost always peers, and the lord chancellor is one of them.

The quaint procedure.

In due course these five peers put on scarlet robes, trimmed with ermine, and seat themselves on a bench immediately beneath the gilded throne in the House of Lords,—the lord chancellor in the center and his four colleagues flanking him, two on either side. When all is in readiness the lord chancellor announces that "His Majesty has been pleased to issue a commission to several lords therein named for declaring his royal assent to several acts agreed upon by both Houses of Parliament." Thereupon the resplendent official messenger of the House of Lords, known as the Gentleman Usher of the Black Rod, struts out of the red chamber and across the corridor to the House of Commons, where he knocks on the door, and, being admitted to the House, announces that the lords commissioners desire the attendance of the Commons in the other chamber.

With the Speaker and the sergeant-at-arms leading the way, the "faithful commoners" (usually only a few of them) troop across to the House of Lords and line up in the rear part of the chamber, where they remain standing. The speaker bows gravely to the lords commissioners on their bench, whereupon the latter all raise their cocked hats. The clerk of the Lords then reads the royal

Cocked hats and French phrases.

letters-patent appointing the commissioners. Each commissioner doffs his hat once more at the mention of his name and title. When the reading of the document is finished, the clerk of the crown and the clerk of the parliaments take their places on either side of the table. The former reads the title of each bill and the latter pronounces after each the Norman-French formula, as has been explained. "School Teachers' Superannuation Act" says one clerk; "Le Roy le veult," gravely replies the other, as he bows low to the lords commissioners. "Manchester Gasworks Extension Act," recites the first clerk; "Soit fait comme il est désiré" is the reply in this instance—the measure being a private bill.

A mere
formality.

So the royal assent is now a picturesque formality and nothing more. The king does not even read the measures.¹ Why should he? He assumes no responsibility for them. It is enough that they have been passed by both Houses of Parliament. They would not have been so passed if the king's ministers had opposed them. So it is the ministers who have the responsibility. It is they who form the target if anyone has criticism to offer.

Why the
royal assent
to laws can-
not be with-
held.

What would happen if some headstrong king should decline, against the advice of his ministers, to give the royal assent to a bill passed by parliament? That is not a hard question to answer. In such a highly improbable contingency the ministry would at once resign. It could not continue in office with a king refusing to give it his confidence. Then the king, presumably, would summon a new prime minister and ask him to form a cabinet. But the House of Commons would refuse to support the new prime minister, otherwise it would be taking the king's side against itself. So there would be nothing to do but to dissolve the House and leave the issue to the people. That would be a dangerous step for any king to take, because an adverse decision at the polls would inevitably suggest his abdication.

The long-
established
precedent.

There is not much likelihood that any British king will ever press the issue to such a perilous point. On no occasion, during the past hundred years, has a monarch ever even hesitated in the matter of giving the royal assent to bills passed by parliament. So the royal veto is obsolete and one can safely predict that it will never be revived. The statement is sometimes made, by way

¹ George III, for a time, tried to do it but found the task too great. It is the prime minister's duty to inform the king concerning the general purport of all important legislative proposals that are pending in parliament; in this way the monarch is enabled to keep himself sufficiently posted without reading the measures.

of giving a realistic touch to the situation, that "if parliament were to send the king his own death warrant, he would be under the necessity of giving his assent to it." But parliament has long since ceased to enact death warrants, or bills of attainder, either for the king or for anyone else.

Back in the days of Charles II, one of his courtiers after an evening of revelry wrote on the door of the royal bedchamber this little epitaph:

Here lives a great and mighty King,
Whose promise none relies on,
Who never said a foolish thing,
Nor ever did a wise one.

To which Charles replied that it was all very true inasmuch as his sayings were his own whereas his acts were the acts of his ministers. In the making of laws the king is a participant, but his participation can be neither wise nor foolish, and he assumes no responsibility for it.

Now although the king has lost all formal authority in relation to the making of laws he is by no means without influence in this field of government. As a matter of courtesy, fortified by usage, he is always kept informed concerning the measures which his ministers propose to lay before parliament. It is not customary to bother the king with matters of routine or detail, but when important measures are being considered by the cabinet it is the duty of the prime minister to ascertain the monarch's opinion, if he has any. The royal opinion may be given much or little weight, depending upon the grounds for it, but the will of the ministers must prevail if they insist upon it. A great deal depends, of course, upon the ability and personal force of the monarch. Something also hinges upon the relations between him and his prime minister. These may be intimate and cordial, or they may be of a reserved and strictly official character.

The absence of royal authority does not imply the absence of royal influence.

Queen Victoria, for example, was on very friendly terms with Disraeli, who consulted her on all the high spots of governmental policy; but she disliked Gladstone, partly because he bothered her with details and often blurted out untactful things. Disraeli was once asked the secret of his ability to get along so amicably with his headstrong sovereign. "I never deny," he said, "I never contradict,—and I sometimes forget." Victoria herself is said to

Victoria and her two great ministers.

have explained her favoritism by remarking that "Disraeli treats me like a woman, while Gladstone talks to me as though I were a public meeting." Her son, Edward VII, was a man of the world, a good politician, and a better diplomat. If he ever had a difference of opinion with his ministers he kept it to himself. Her grandson, George V, has managed to maintain cordial relations with prime ministers of such widely varying types as Baldwin, Lloyd George, and Ramsay MacDonald, and has been freely consulted by them all. To what extent his personal opinions have been given weight by these ministers there is no way of ascertaining. Interchanges of opinion between the king and his ministers are in the highest degree confidential on both sides.¹

The crown's part in administration:

1. Appointments.

The crown is not only a participant in lawmaking but the titular chief executive as well. All executive authority, of whatever character, is exercised in its name. It is the function of the crown, for example, to see that the laws are observed and enforced. To this end all the higher executive and administrative officers of the realm (with a few exceptions of slight importance) are commissioned in its name.² With some exceptions, also, the crown has the right to suspend or dismiss these officials. Thus it controls the entire personnel of civil administration. Similarly it is commander-in-chief of the army, the navy, and the air force—as is the chief executive in all other countries, including the United States. War can be declared and peace concluded by the British crown without consulting parliament. But the money needed for carrying on a war can only be had by parliamentary action.

2. Foreign relations.

The crown conducts the foreign relations of Great Britain, sending instructions to "the ambassadors and ministers of His Britannic Majesty" as they are called. The crown is also the treaty-making authority, and all international agreements are made in its name. Treaties can be drawn, ratified, and put into operation without parliamentary concurrence, provided, of course, that they do not stipulate for the cession of territory, or the payment of money, or for some other action which only parliament can authorize. It will be observed, therefore, that the British crown possesses all the executive powers that are vested in the President of the

¹ The extent of monarchical influence upon governmental policy is discussed at length in J. A. Farrer, *The Monarchy in Politics* (New York, 1917).

² This does not mean, of course, that the commission of every civil, military, and naval officer is actually signed by the king. Much less does it mean that the appointees are selected by him.

United States, and more besides. Sir Sidney Low has remarked that the British crown is merely "a convenient working hypothesis," but it would seem to be a good deal more than that. A government cannot be conducted by hypothesis. The crown governs England with the approval of the House of Commons.

Now this is merely a figurative way of saying that the prime minister and his cabinet govern the country. It is they who direct every exercise of the royal prerogative. The prime minister of Great Britain is the real chief executive, working under cover of an ancient mask. He and the other ministers see that the laws are carried into effect. They spend the money that parliament appropriates. They decide who shall be appointed to office. They direct British foreign policy and make treaties. They even decide issues of war and peace. When Great Britain declared war against Germany in 1914 it was the ministers, acting in the name of the crown, who threw the British empire into the great conflict. But no cabinet would ever take so momentous a step unless it felt certain that parliament would approve its action.

The ministers, therefore, and not the king, are the custodians of the powers of the crown. The completeness of this control is shown by the fact that it extends (with a few exceptions) even to the selection of the king's personal staff. The king's private secretary is his own choice and does not change with the advent of a new ministry. He is a very useful channel of communication between the king and the cabinet on confidential matters. But the other high officers of the royal household are in most cases appointed with the approval of the cabinet and change when the ministry changes. This might seem to be carrying the ministry's guardianship to an absurdity and Queen Victoria once raised a fuss about it.¹ But it is a wise custom because various episodes in English history point to the desirability of making sure that those who are in immediate attendance on the king or queen shall not be hostile to the ministry in power.²

All the powers of the crown are put into action by the prime minister and his colleagues.

The completeness of the cabinet's control as illustrated by the appointing power.

¹ In 1839 Sir Robert Peel was asked by Queen Victoria to form a ministry. Before doing so he requested an assurance that certain high-titled ladies in the queen's household (known as the Ladies of the Bedchamber) should be replaced by others who were in sympathy with Peel's party. The queen declined to agree and Peel thereupon refused to accept the post of prime minister. Somewhat later the queen mollified her objections, whereupon a compromise was arranged and Peel took office.

² Particularly in the reign of Queen Anne when Sarah, Duchess of Marlborough, used her position as Mistress of the Robes to influence the queen's attitude and

Why parliament so readily bestows powers on the crown.

So, when parliament confers authority on the crown it does no more than delegate power to one of its own committees, for the cabinet is the great standing committee of the Lords and Commons. It is customary for parliament to provide from time to time that various things may be done by order-in-council, that is, by the privy council in the name of the crown. This is merely a round-about way of giving power to the ministers. To the king as an individual parliament never grants any authority by statute. To do so would be out of keeping with the whole spirit of the British constitution.

The crown and the "fountain of justice."

It is often said that the king is "the fountain of justice and honor." Englishmen are fond of this expression, but it is entirely figurative, a survival from the old, far-off, forgotten days when the king actually intervened to set aside the decisions of the courts and when the king's conscience spoke the last word in judicial administration. To-day neither the king nor the crown is a fountain of justice save in one respect, namely, in the case of those issues which come before the judicial committee of the privy council. There, as will be seen later, the crown still functions as a court of last resort.¹ But the crown cannot of itself establish any new court, or change the jurisdiction or procedure of any existing court, or alter the number of the judges, or the mode of their appointment, or the tenure of their office. It is true that the judges of the regular courts are appointed by the crown, but it has no control over their actions during good behavior. It is also true that the crown has the prerogative of pardon, but this is not a judicial power; it is of the nature of an executive interference with the penalties that follow conviction.

And the "fountain of honor."

The expression "fountain of honor" also goes back to the time when the monarch, at his own discretion, had the right to create new peers, to bestow baronetcies, knighthoods and other honors, and even to grant pensions. Henry VIII confiscated most of the estates held by the monasteries and with these lands endowed many new families. The Stuart kings made peers of their personal favorites. But the king's personal preference no longer controls the making of peers. All public honors are still bestowed by His Majesty, but on the advice of his ministers. On appropriate occasions on various political questions. To such a degree was this influence exerted that the then-current aphorism, "Anne reigns but Sarah governs," had a good deal of truth in it.

¹ See, chap. xv.

casions each year a list of peerages and other honors is announced. This list has been prepared by the prime minister, and it may contain the names of persons who are utterly unknown to the king. It may even include the names of some who are personally obnoxious to him. There is at times a truly Pickwickian ring to the official announcement that "His Majesty has been graciously pleased" to confer a peerage upon some hardened old sinner. The prime minister, however, is mindful of the king's sensibilities in making up the list. As a matter of courtesy he may add a name or strike off a name at the monarch's request. But such action must in all cases be governed by the fact that the prime minister, not the king, is responsible to parliament for inclusions or exclusions. If the list of honors is open to criticism, it is he, and not His Majesty, who must bear the brunt of it.¹

Since the Act of Supremacy was passed, about four hundred years ago, the headship of the Church of England has been vested in the crown. The crown, accordingly, appoints the archbishops, bishops, and other ecclesiastical dignitaries. In its advice concerning these ecclesiastical selections, however, the cabinet usually gives deference to usage in promoting clergymen from lower appointments to higher, but there is no obligation to do this. The advisers of the crown have a free hand in the matter. Prior to 1919 parliament was the legislative organ of the Established Church, but in that year it enacted the Church of England Assembly (Powers) Act which enables the national assembly of the Church of England, not a statutory body, to pass measures which, under certain limitations, can be presented for the royal assent if a resolution to that effect is passed by both Houses of Parliament. Such measures may relate to any matter concerning the Church of England and may actually repeal an act of parliament. This represents a very remarkable development in English lawmaking, a step in the direction of legislative devolution. The crown, as head of the Established Church, is also vested with final authority in certain matters of ecclesiastical discipline; but it has been provided by statute that such controversies shall be heard and determined by the judicial committee of the privy council.

The crown
and the
church.

¹ On rare occasions the monarch has offered a peerage to someone without consulting his ministers—as in the case of The Rt. Hon. Herbert H. Asquith who became Earl of Oxford and Asquith. But these have been cases where, because of the circumstances, ministerial approval could be taken for granted.

Why the
monarchy
endures.

English history abounds in paradoxes, and not least striking among them is the paradox that the crown grows stronger as democracy spreads. The powers of the *king* have dwindled to insignificance; but the strength of the *crown* has become steadily greater during the past hundred years. Now the question naturally arises: If the authority of the crown is no longer exercised by the king, why retain the kingship at all? Why not let the prime minister assume in name, as in fact, the executive headship of the nation? What good purpose is served by continuing to use fictions and figures of speech which have long since ceased to square with the realities? Why keep the ministry at work behind a mask? Would it not be better to abolish the institution of royalty and save the half million pounds per annum that it costs the taxpayers of Great Britain?

Reasons of
sentiment.

A satisfactory answer to this question would be neither short nor simple. Nor would it carry much conviction to the minds of those who do not understand the traditional conservatism of the British temperament or the actual workings of parliamentary government under the party system. Motives of sentiment naturally count for a good deal with Englishmen. No country is disposed to throw overboard, without considerable provocation, an institution that it has maintained for over a thousand years. "Governments long-established should not be changed for light or transient reasons," to use Jefferson's words. But sentiment is not the only thing that keeps monarchy in the saddle. There are practical considerations as well.

Some practical
reasons.

The first, and doubtless the strongest practical reason for the continuance of the kingship is the fact that if it were abolished something would have to be put into its place. It would be necessary to appoint, or to elect, or in some other way to secure a titular head of the nation. The prime minister is not the titular chief executive in any country. It is impossible to conceive of a stable parliamentary government without there being at its head someone whose tenure of office is beyond the fickleness of a parliament or a congress. This tenure must be long enough to assure stability—be it four years as in America, seven as in France, or for life as in Britain. If the monarchy were abolished and a republic set up, it would be necessary to provide for a Lord Protector, or a President, or some other functionary chosen either by parliament as in France, or by the people as in America.

The question would then arise: What powers should this elective titular executive possess? If he were given a large measure of independent authority, as in the United States, it would necessarily be at the expense of powers now possessed by the cabinet and through it by parliament. In other words there would be an end to the supremacy of the House of Commons. If, on the other hand, the new chief executive were given no substantial power, or as little as is possessed by the President of the French Republic, he would be only perpetuating the kingship under a new name. And there would be the constant danger that this elective head of the state, although endowed with no real power, would strive by devious means to obtain it. He would be under constant temptation to do what President Millerand did in France some years ago—with similar results.¹ When the titular chief executive has no real power there is a good deal to be said for keeping the post hereditary.

An American or a French president?

Englishmen have grown accustomed to the direct and continuous control of the House of Commons over the executive branch of the government. They have never looked with favor on the doctrine that one branch should serve as a check upon the other. There is no likelihood that they would consent to the establishment of an independent presidential executive on the American model. The only alternative is an executive like the French president who neither reigns nor governs. That, to the mind of the average Englishman, would be no improvement upon what he already has.

Neither type would do.

The English king has parted with his powers, or "holds them in abeyance" as some prefer to say, but this does not mean that he performs no useful service. The whole executive authority returns temporarily to his hands whenever a cabinet resigns. During the brief interval between the resignation of one prime minister and the installation of another, the king is the sole depository of executive power. He is the one personage in the realm who stands aloof from partisan strife and can be depended on to act impartially. He is the umpire who sees that the great game of politics is played according to the rules. There are times, moreover, when a wise king can assume, in the public interest, the rôle of peacemaker between warring political factions whose hostility is working injury to the country as a whole. There can be no doubt that the influence of George V was helpfully directed towards the

Tangible services which the monarch performs.

Some examples.

¹ See chap. xxi.

settlement of the Irish question.¹ In diplomacy, too, the king may at times render a signal service to the nation. Edward VII gave a notable illustration of this. When he came to the throne his country was without a friend in Europe. It was his desire to establish an *entente* with France, a desire which had the cordial support of his ministers. Within a few years, by a combination of persistence and tact, he managed to achieve his aim. His success probably altered the history of the world, for Europe would be differently constituted to-day if England and France had been at swords' points in 1914 as they were in 1901.

A symbol of
imperial
unity.

Finally, the king supplies the vital element of personality and picturesqueness in government. The average man does not easily get hold of abstractions. Sovereignty, ministerial responsibility, powers of the crown, and such things mean little to him. But anyone can visualize a king on the throne. This is particularly important in a far-flung empire which includes white, black, brown, red, and yellow men on five continents. Tell a Dyak in Borneo, a Sikh in India, or a "big, black, bounding beggar" in the Soudan that he must give allegiance to the concept of imperial unity and he will get as far with the idea as he would with Einstein's proof of the finitude of space. But when you talk to him of a king who wears a crown, sits on a golden throne, and asks the allegiance of four hundred million people, he is more likely to get the picture.

The link of
empire.

Moreover the king supplies the one tangible link which holds together all the members of the British commonwealth of nations, including Great Britain, Ireland, India, Canada, Australia, South Africa, and the other dominions. To these dominions the legislation of the British parliament does not ordinarily extend. They have their own parliaments, their own cabinets, even their own flags. The one great bond among them all is the allegiance to the king, and in this sense the monarchy is the outstanding symbol of imperial unity. Hence any change in the character of the chief executive would risk a snapping of the strongest tie which now holds a loose-jointed British commonwealth of nations together. For it is hard to believe that Canada, Australia, and the rest would willingly transfer their homage from their own hereditary king to a President of the British Republic elected by Englishmen, Scotchmen, and Welshmen alone.

¹ See the documents printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (Yonkers, N. Y., 1925), chap. i.

In every country, no matter how democratic it may claim to be, there are bound to be ranks and gradations of society. These gradations may be based upon birth and lineage, or upon length of residence in the country, or upon wealth, or upon political prominence. In Great Britain, for many centuries, social status has rested very largely upon birth and lineage. This being the case, it is natural that the headship of British society should belong to the monarch. The king, the queen, and the members of the royal family are in a position, if they choose, to set the social standards of the nation. Whether they have performed this function better or worse than it would have been performed by a social leadership based upon wealth or upon popular election is a question upon which outsiders may disagree, but on which most Englishmen do not. Social leaders will arise under any form of government, and they will exercise a dominant influence not only upon the manners and tastes of the people but upon morals, art, literature, education, and benevolence. A royal court, when it is minded to set a good example, can do it in a very effective way. It can do much for the elevation of the public morality and for the improvement of the social amenities, for the advancement of learning, and for the enhancement of the national pride.

The king as the head of British society.

If the institution of royalty were standing in the way of political liberalism it would be another matter; but the abolition of the kingship would not make England any more democratic than she is to-day, because the people already control to the fullest possible extent all branches of their government. On the other hand the abolition of the monarchy would necessitate considerable changes in various branches of life not directly connected with politics. It would leave the Church of England without a titular head; it would compel a recasting of the social structure; it would sever the strongest formal tie that binds the dominions to the mother country; it would substitute an abstraction for a visible symbol as the basis of British allegiance. The saving in expenditure would be inconsequential, for the cost of maintaining the kingship is only one-fifteenth of one per cent of the total British budget.

Nothing would be gained in Great Britain by abolishing the monarchy.

The arguments for abolishing the British monarchy are like those put forth in favor of reformed spelling and the metric system; they would carry more weight if people were not accustomed to what they have. Englishmen, like all other people, and perhaps to an even greater extent, prefer what they are accustomed to—

The brake of habit.

whether it be in diet, recreation, or political institutions. With a clean slate to work upon it is improbable that the British people would set up, in the twentieth century, an hereditary monarchy, a House of Lords, and an Established Church. But would the people of the United States now create an electoral college as part of the machinery for electing a president, or give all the states equal representation in the Senate, or let every state make its own divorce laws. Both countries are disposed to let well enough alone. There are enough urgent problems without turning attention to the endurable anachronisms.

Popularity
of the Eng-
lish king-
ship.

The popularity of the kingship among all ranks of the British people has often been commented upon by outsiders. It is as great to-day as it ever was, perhaps greater. A century ago it was at low ebb, but it made a notable advance during the long reign of Queen Victoria (1837-1901). There have been proposals to abolish the House of Lords, to reform the cabinet, and even to curb the power of the House of Commons; but from no source worthy of consideration has there emanated any proposal to abolish the monarchy. Six or seven decades ago there was a republican group in England and it seemed to be gaining ground. To-day it has virtually disappeared, except for the Communists. Even the leaders of the Labor party, although some of them profess to be "republicans in principle," are agreed that the monarchy must be retained, essentially in its present form, because there seem to be insuperable difficulties in providing for an elective headship.¹ The masses of the people have come to realize that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics, and with no ambitions to gratify, lending dignity to government but not standing athwart the path of the public will—they have come to recognize that whatever may be the causes of their varied troubles, the monarch is not one of them. If the crown, as has been well said, is no longer the motive power of the ship of state, it is the spar upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel.

There is no single volume on the development of the British monarchy, and it would be impossible to cover the subject except by writing a con-

¹Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 109-110.

stitutional history of the realm. On the development of the kingship to the close of the middle ages there is much material in the standard works of Freeman, Stubbs, Ramsay, Haskins, Maitland, Round, Norgate, Green, Tout, Vickers, and Davis—the titles of which may be found in the card catalogue of any good library. The vicissitudes of the monarchy during the Tudor and Stuart periods are narrated in the works of Gardiner, Pollard, Fisher, Innes, Montague, Trevelyan, and Firth, all of which are well known to every serious student of English history. Lecky and Walpole cover the eighteenth century. For the period 1760–1860 there is an excellent survey in the first volume of May and Holland (see *above*, p. 37).

The most recent study of the powers and functions of the crown at the present time is Sir William Anson, *Law and Custom of the Constitution* (5th edition, Oxford, 1922); but there are excellent chapters on the subject in A. Lawrence Lowell, *The Government of England* (Vol. I, chap. i); in F. A. Ogg, *English Government and Politics* (New York, 1929), especially chaps. iv–v; and in Sir John A. R. Marriott, *Mechanism of the Modern State* (2 vols., New York, 1927), Vol. II, chaps. xxiii–xxiv. Discussions of varying value may be found in Michael MacDonagh, *The English King* (London, 1929); Sir John A. R. Marriott, *English Political Institutions*, chap. iii; Lord Courtney, *The Working Constitution of the United Kingdom*, chap. xii; Sir Sidney Low, *The Governance of England*, chaps. xiv–xv; and Edward Jenks, *The Government of the British Empire*, chaps. i–ii. Mention has already been made of James A. Farrer's volume on *The Monarchy in Politics* (London, 1917). Sir Sidney Lee's *Life of Edward VII* (2 vols., London, 1925–1927) contains in its second volume an excellent picture of the modern kingship.

CHAPTER IV

THE CABINET

While every act of the state is done in the name of the crown, the real executive head of England is the cabinet.—*A. V. Dicey.*

The cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to parliament, or to the nation; or the relations of its members to one another, or to their head.—*W. E. Gladstone.*

The cabinet has no legal basis.

The cabinet, as Gladstone once remarked, is "the threefold hinge that connects together for action the King, the Lords and the Commons." It is, he went on to say, "the most curious formation in the political world of modern times. It lives and acts simply by understanding, without a single line of written law or constitution to determine its relations."

Yet plays a vital part in British government.

Yet the cabinet is the most important single piece of mechanism in the structure of British government. (It is the pivot on which the whole machine revolves. It is sometimes spoken of as a committee of the privy council, since all members of the cabinet are also members of that body; and it is also called the great standing committee of parliament, which is also a correct appellation inasmuch as members of the cabinet have seats in one of the two parliamentary chambers.) But the cabinet of Great Britain is more than a committee; it is the guiding and directing force in government. Without a knowledge of its structure and functions no one can understand the responsiveness of British administration to the will of the people. Yet in spite of this far-reaching importance there is not a single word in the written laws concerning its composition, its powers, its duties, or its responsibilities. The laws of England simply ignore its existence.

Its early development.

Among the governmental institutions of the modern world the British cabinet is perhaps the best example of what usage can build up. The old Curia Regis of Norman times, it will be remembered, became the progenitor of the privy council, a body which gave advice to the king and helped him with the routine work of administration. Its members were chosen at the discretion

of the monarch, and although they were often members of the nobility (and hence members of parliament) it was not essential that they should be. During the Tudor and Stuart periods the privy council developed into a powerful body and through its various committees conducted almost every branch of the national administration. Nothing was exempt from its vigilant supervision. Its members, moreover, were not responsible to parliament but to the king alone. The only way in which parliament could reach them was by impeachment and even this method was not always effective, for the king could pardon an impeached privy councillor in case of conviction.

So the privy council kept growing in size and expanding its functions. With the growth of its membership and the multiplication of its committees, the council eventually became so unwieldy that it ceased to be useful as an advisory body. Its numerous members could not agree on anything without ^{endless} interminable debates. The rank of privy councillor, moreover, was frequently bestowed by the king as an honorary distinction upon men who rarely or never attended the council's meetings. It was natural, therefore, that the king should adopt the practice of summoning to his private consultation-room, or "cabinet," a few selected members of the council who could give him advice without long debates and too much publicity. The exact date at which this practice originated is not known; it probably began some time before outsiders learned of it. In the time of Charles II, at any rate, the cabal consisted of five members, all of whom were noblemen and close friends of the king.

This virtual superseding of the privy council, so far as its advisory functions were concerned, was not relished by parliament. The House of Commons looked upon it as an attempt "to introduce a tyrannical and arbitrary way of government." The Commons desired to control the royal advisers, which it could not do so long as the king chose them without public announcement and conferred with them in secret. There remained, nevertheless, the weapon of impeachment and it was by using this bludgeon that parliament eventually made good its contention that whoever gave the king advice, whether in public or in secret, should do so at his own peril if the advice turned out to be bad. This principle was definitely established in 1679 when parliament found a way of removing one of the king's most trusted counsellors despite all that

A wheel
within a
wheel.

The Danby
dismissal
and its sig-
nificance.

Charles II could do to save him. The adviser in question was Thomas Osborne, Earl of Danby, who held the office of lord treasurer. When the House of Commons proceeded to impeach him, the king dissolved it and ordered a new election. But the new House, when it assembled, renewed the attack. Danby pleaded that whatever he had done was by order of the king, and that the king could do no wrong. But parliament went ahead with the prosecution and sent Danby to the Tower. By so doing it definitely established the principle that no minister could shelter himself behind the legal immunities of the throne.

How it
created a
dilemma.

Here, then, was an anomalous situation and one that could not continue. The king had a right to choose his own advisers. No one questioned this right which had existed from time immemorial. It was his prerogative to choose men in whom he had confidence and to entrust them with the routine work of administration, this work to be done in accordance with the royal instructions. But on the other hand parliament had now made good its right to remove by impeachment any royal adviser whom it did not approve. Not only that but it might punish him for having wrongly advised the king, or for having carried out the royal instructions to the detriment of the national welfare. Surely this was a tight place for any minister to be in. If he disobeyed the instructions of the king he would be dismissed from office; if he obeyed them he was liable to be impeached by parliament and sent to prison. No government could function under such an arrangement. Some plan of unified responsibility had to be devised.

A solution
found in the
establish-
ment of full
parliamen-
tary control
over the
cabinet.

The House of Commons had its own ideas as to how this might be done. Many years prior to Danby's dismissal it had offered a solution of the problem by declaring (in the Grand Remonstrance) that the king ought "to employ such counsellors only . . . as parliament may have cause to confide in." In other words the responsibility of the king's advisers could be unified by allowing parliament to choose them for him. But Charles I would not listen to this proposal; if he had done so he might have saved both his throne and his head. Nor was it accepted by Cromwell during his term as Lord Protector. Charles II, after the restoration of the Stuart monarchy in 1660, also disregarded it, and so did James II during his short term on the throne. But the House of Commons continued to urge the proposition at every opportunity and in the end its insistence was rewarded. William and Mary, on their

accession to the throne in 1688, conformed to the demand, and the doctrine that the king's ministers are responsible to parliament has not been seriously disputed since that time.

But let us return for a moment to the privy council. As an advisory body it was gradually supplanted by the cabinet, but it did not go out of existence. There were other things for the privy council to do, and it remains a part of the British administrative machinery to-day. It is still a large body, with nearly three hundred and fifty members. The membership is made up, for the most part, of men who have served or are serving in the cabinet. If anyone becomes a minister of the crown he is at once made a privy councillor. When he gives up his office as minister he remains a privy councillor for life. In addition many others, who have attained eminence in political life, or as judges, or in the civil service, or in art, literature, law, or science, or in the government of the colonies, are made privy councillors by the crown as an honor. Thenceforth they can write the letters P.C. after their names and use the designation Right Honorable.

Meanwhile the privy council continued.

The whole membership of the privy council is never called together to do business. They are summoned only on the occasion of some important ceremony such as the coronation of a new sovereign. On the other hand meetings of the council are frequently held, sometimes a couple of times a month. Three or four members of the cabinet, including the lord president of the council, come together (usually at Buckingham Palace) and act for the whole membership. The king ordinarily attends although his presence is not essential. The business is purely formal and consists mainly of adopting orders-in-council which the cabinet has already agreed upon.¹

Its present functions.

The cabinet replaced the privy council in its advisory functions two hundred and forty-odd years ago, but the method of ensuring the effectiveness of parliamentary control over the cabinet was still to be worked out. Prior to the Revolution of 1688 the kings had chosen their advisers from among their own intimate friends and supporters. The new monarchs began the innovation of selecting their advisers from both the major party groups in parliament. In this they intended well, their aim being to give both Whigs and Tories an equal measure of recognition. But the plan worked badly, as anyone might have predicted. Ministers drawn from two

How party solidarity came into the cabinet.

¹ For an explanation of these orders-in-council see p. 45.

opposing political parties could not work together, and the friction grew more pronounced as party lines became more plainly drawn. The cabinet proved to be a house divided against itself; it could not give unanimous advice; one faction had the confidence of a majority in parliament while the other did not. As the only way out of the difficulty it was decided to choose all the ministers from the majority party, which happened at this time to be the Whigs. The cabinet of 1697, popularly known as Sunderland's *Junto*, was the first British ministry constituted on the principle that all its members should possess the confidence of the dominant party in parliament. The new practice was generally followed by Queen Anne even to the extent of having Whig ministers when her own personal sympathies were with the Tories.

But it takes time to establish a custom of the constitution and even at the close of Anne's reign the principle of ministerial solidarity was not beyond the possibility of an overthrow. It is entirely possible, indeed it is probable, that if Anne had been succeeded by an ambitious and firm-willed king the bipartisan cabinet system would have been restored. As it turned out, however, the situation became favorable for continuing the practice which William and Anne had begun.

The work of
Walpole.

George I, who succeeded Anne, was a dull-witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English language. The details of British domestic policy did not interest him in any way. Accordingly he abstained from presiding at meetings of his cabinet and gave this function to one of its members, Sir Robert Walpole, who thus became the first prime minister in the modern sense. There had been chief ministers of the king long before Walpole's day—Wolsey and Thomas Cromwell under Henry VIII, Burleigh under Elizabeth, Strafford under Charles I, and Clarendon under Charles II. But these chief ministers did not hold their posts by virtue of their being the recognized leaders of the dominant party in parliament. Walpole was the first royal adviser to preside at cabinet meetings and at the same time serve as the leader of the House of Commons. He was, besides, a statesman of great competence and sagacity. For twenty years, while he held the confidence of a majority in the House of Commons, George I and George II let him govern the realm. To keep a majority on his side Walpole resorted to methods which would now be regarded as crooked;

but it can at least be said that he never tried to hold his post without a parliamentary majority back of him. When, in spite of his skill and corruption, he failed to command a majority (1742), he resigned at once, and this notwithstanding the fact that he still retained the full confidence of the king.

During his long lease of power Walpole moulded the cabinet system into the form which it retains to-day. He established the principle that the king, having chosen a prime minister, should leave to this minister the selection of the other ministers. He made himself the sole medium of communication, on all important matters, between the ministry and the monarch. Accepting the doctrine that the cabinet must at all times command the support of a majority in the House of Commons, he insisted that he, in turn, was entitled to his party's support. He demanded, and enforced his demand, that every Whig member of the House should stand behind the cabinet on every issue. The development of the cabinet and of the party system were thus made to proceed hand in hand.

In 1760, however, things took a somewhat different turn. George III, who came to the throne in that year, made a spirited attempt to revive the personal influence of the monarch upon the course of national policy. Realizing the futility of any attempt to hold ministers in office without a parliamentary majority behind them, he bestirred himself to build up, in the membership of the House, a party of his own,—the king's friends, they were called. With the Tories as a nucleus he was able to create a parliamentary majority for prime ministers of his own choosing, such as the Earl of Bute and Lord North. But this procedure, founded as it was upon the misuse of the royal influence and the temporary disorganization of the king's opponents, could not long endure. It came to an end about the close of the American Revolution.

For the past hundred years, therefore, the outlines of the British cabinet system have remained unchanged, but its various features have become clarified by a series of precedents. It has become an established rule, for example, that when a prime minister resigns the entire cabinet must go out of office with him, in other words that the cabinet's responsibility is collective. It has become settled, as will be explained a little later, that members of the cabinet are not only responsible to the king and to parliament, but also to one another. With the steady development of the party system,

Emergence of the cabinet system into its present form.

The attempt of George III to control it.

The system continues to evolve.

moreover, the functions of the cabinet in the matter of framing the party program and transforming party pledges into laws have been given emphasis. The whole system has been shaking itself down to a stable basis; but it has done this slowly because it rests upon usage. Nor is there any reason to think that this evolution of the cabinet system has yet come to an end. It is still developing new features and through future generations will doubtless keep on doing so.

Varying
size of the
cabinet.

Walpole's cabinet consisted of from seven to ten active members. But as the functions of national administration widened each succeeding cabinet tended to grow larger until the membership at the close of the nineteenth century was more than twenty. Meanwhile some thirty or more additional ministers were given administrative posts although they were not members of the cabinet. In piping times of peace it was possible to do business with twenty members sitting around the cabinet table, but when the strain of the world war came upon Great Britain the size of the cabinet proved to be a hindrance to the prompt reaching of conclusions. As Lloyd George said: "You can't wage war with a Sanhedrin." In 1916, therefore, a war cabinet of five (later six) members was created within the regular cabinet circle and this smaller body was given full control of Britain's war program. Of the six members only one (the chancellor of the exchequer) had any administrative duties. The rest of the directory, including the prime minister, were left free to give their energies to the prosecution of the war.¹ The plan fully justified itself and the suggestion was made that the size of the cabinet should be permanently fixed at ten or twelve members.² But nothing came of this proposal. In 1919 the old cabinet structure of about twenty members was quietly restored and it has since remained.

How its
members
are chosen.

Some pre-
liminary ex-
planations:
privy coun-
cil and cab-
inet.

How is the cabinet organized, and what are its functions at the present time? Before entering upon such a discussion it is well to define certain terms which Englishmen use in describing the executive branch of their government. These terms are privy council, ministry, cabinet, and "the government." In theory the privy council still controls the actions of the crown. Acts of the crown are declared to be "by and with the consent of the privy council." This is because the cabinet, as has been said, is not rec-

¹ For a further discussion see John A. Fairlie's *British War Administration* (Oxford, 1919).

² In the *Report of the Machinery of Government Committee* of the Ministry of Reconstruction (1918), commonly known as the Haldane Report.

ognized by the constitution or the laws. Hence no one is ever officially appointed to membership in the cabinet. He is appointed a privy councillor and then summoned to cabinet meetings. The cabinet, therefore, may be defined as a body of some twenty privy councillors who have been chosen by the prime minister to assist him in his functions.

Another distinction is somewhat confusing to the outsider, namely, the distinction between the ministry and the cabinet, between ministers and cabinet ministers. All members of parliament who hold important administrative posts of a political character, and who give up such positions when a cabinet resigns, are known as ministers. In other words the ministers are the high officials of the crown who hold office subject to the continued confidence of a majority in the House of Commons. There are more than fifty ministers but only twenty-one cabinet ministers. The ministry does not meet as a body for the transaction of business. It has no collective functions. It is only the cabinet ministers who meet.

Ministers
and cabinet
ministers.

The functions of a minister (unless he is a cabinet minister) are individual functions only. He may be the head of a minor department (the heads of major departments are all in the cabinet), or more often he is an aide to a major department head, that is an undersecretary, or a parliamentary secretary. The whips of the majority party in the House of Commons are also rated as ministers. The broad distinction between ministers and cabinet ministers in Great Britain may be illuminated for American readers, perhaps, by reference to the government of the United States where the President, on coming into office, appoints a considerable number of higher administrative officials who ordinarily go out of office when his term expires. These include not only the ten members of the President's cabinet who are heads of departments but a much larger number of assistant secretaries in the state, war, navy, treasury, and other departments. In the United States there is no term that accurately designates this entire body of cabinet secretaries plus assistant secretaries, but the group corresponds roughly to what Englishmen call "the ministry."

An analogy.

The cabinet is the smallest of the three groups and the only one that has a collective responsibility. It is composed of those ministers whom the prime minister designates to membership in his cabinet, but the prime minister in making his designations is guided largely by precedent. Some high ministerial posts are always of

A definition
of the cab-
inet.

cabinet rank; some less important ones invariably are not. There are a few which may or may not be of cabinet status as the prime minister decides. For the prime minister is head of the ministry and cabinet alike.

The ministers and "the government."

Finally there is "the government," a term which Englishmen use in a sense unfamiliar to outsiders. When they speak of a change in the government, or a change of government, for example, they do not mean a change in the form of government. When they say that "the government is likely to fall" they do not mean that the monarchical system is about to be supplanted by something else. By "the government" they mean the executive authorities who are in control for the time being—namely, the prime minister and his ministerial colleagues. It is they who are responsible for the passage of "government measures" by parliament. The term most nearly analogous in America is "the administration," which is somewhat loosely used to include the President, the members of his cabinet, their assistants, and all others who would go out of office with a change in the presidency.

The prime minister:

How he is chosen.

The prime minister, as has been said, is head of the ministry, the cabinet, and "the government." The king goes through the gesture of selecting this official, but he has very little discretion in making the choice. He summons, and by usage must appoint, the leader of that political party which controls a majority in the House of Commons. If no single party controls a majority he calls upon some leader who can form a coalition or otherwise assure himself of a majority on important measures. Under the two-party system, which prevailed in England until recently, the king's task was very simple. When a prime minister resigned by reason of a defeat at the polls or on the floor of the House, he merely sent for the leader of the victors and invited him to assume office.

But when three political parties are represented in the House, with no one of them controlling a majority, the royal function is not so simple. The king must then use his own judgment as to which leader he will summon. The main thing is that whoever takes office as prime minister shall be able to command a majority. If he can do this from within the ranks of his own party so much the better. If he cannot, then he must secure it by some coalition, compromise, or understanding with one of the other parties. When Mr. Ramsay MacDonald was invited to become prime minister in 1928 the Labor party did not control a majority in the House. But before

taking office he satisfied himself that a sufficient number of Liberals would support him as against the Conservatives and thus enable him to carry on the government.

In any event the prime minister is always chosen from among the two party leaders, or the three party leaders, as the case may be. It is inconceivable that anyone other than a recognized leader would be called upon. In 1922, when Mr. Lloyd George tendered his resignation, there was no recognized leadership in the ranks of the Conservatives. The king sent for Mr. Bonar Law who agreed to accept the post of prime minister in case the Conservative party would formally designate him as its leader, which it did. Each political party determines for itself the methods by which its own leader is chosen. Ordinarily, however, the selection is made by a caucus which is attended by the party's membership in the House of Commons along with various other prominent party workers.

He is always
a party
leader.

During the two hundred and eight years, 1722-1930, Great Britain had thirty-nine prime ministers. This is in sharp contrast with the experience of France which has had a larger number of prime ministers in one-quarter of the time. These thirty-nine prime ministers of Great Britain, from Sir Robert Walpole to Ramsay MacDonald, headed fifty-six cabinets.¹ Eleven British premiers held the office twice; two of them three times; and one (Gladstone) was prime minister four times. Thus each English ministry has remained in power for less than four years on the whole, and the thirty-nine prime ministers have averaged less than six years in office. While any British subject is eligible to the premiership it is significant that twenty-seven of the thirty-nine were Englishmen by birth. Six were Scotchmen, three Irishmen, one a Welshman, one a Canadian, and one (Disraeli) was of foreign extraction but of English birth. Twenty-five were peers or sons of peers, and all except three or four were men of considerable wealth. It is worth remarking that thirty-three out of the thirty-nine were university graduates—almost all of them from Oxford or Cambridge. This is striking evidence of the prominent part which the two oldest universities of England have taken in the public life of the nation.

Who the
prime min-
isters have
been.

Birth and
education.

Nearly all the prime ministers went into public life at an early age; eleven became members of parliament at twenty-one, and

Age and
political
leanings.

¹ Most of the data upon which this and the next two paragraphs are based have been taken from the Hon. Clive Bigham's volume on *The Prime Ministers of Britain* (New York, 1922).

the average for the entire list is about twenty-five. No such precocity in politics has been shown by the presidents of the United States. The average age for becoming prime minister, however, is fifty, which indicates that the office has demanded a considerable apprenticeship. There have been notable exceptions, of course, as in the case of the two Pitts; but for the most part the younger politicians have had to bide their time. As for their party affiliations, twenty-one prime ministers were Whigs or Liberals, while only sixteen were Tories, Conservatives, or Unionists. One premier, the Duke of Portland, happens to fall in both categories; for he held office twice, first as a Whig and later as a Tory. And Britain has had one prime minister from the Labor party.

Vocations
and length
of service.

Very few British prime ministers have had any vocation but politics. One was a soldier, one a captain of industry, and four were practicing barristers. But not all of these were dependent upon their own earnings for a livelihood. All but a few of the prime ministers have been men of means. Some had very long political careers. The Duke of Newcastle, for example, was continuously in one office or another for forty-six years, while Lord Palmerston was on the public pay roll for forty-seven years. Gladstone was alternately in and out of office during more than half a century. Tenure of the prime ministership does not seem to have cut men's lives short, for their average longevity (omitting those still living) exactly coincides with the Psalmist's span of three score and ten. Six of them attained the age of eighty.

The "typical"
premier.

The office of prime minister is not hereditary, yet heredity has apparently had its influence. More than three-fourths of those who have held the office were men whose fathers had sat in parliament before them; more than half were the grandsons of such men. More than a third could trace relationship by birth or marriage to other prime ministers. The typical premier of Britain has been, therefore, a well-born, well-to-do, well-educated man who entered politics early and made it his profession. When asked what qualities are most required in a prime minister, the younger Pitt replied: "Eloquence first, then knowledge, thirdly toil, and lastly patience." To-day this order would probably be reversed.

Prime ministers
and presidents
compared.

More than forty years ago Mr. James Bryce (afterwards Lord Bryce) wrote an illuminating chapter on "Why great men are not chosen Presidents." In it he propounded the query why the chief executive office in the United States had not been more often filled

by great and striking men. He pointed out that among the twenty-one presidents who had held this office during the century following the inauguration of Washington, only a half-dozen or so were statesmen of great or striking merit. Washington, Jefferson, Madison, Jackson, Lincoln, Grant, and Cleveland were about the only chief executives of the United States who could properly be rated in 1888 as statesmen of the first rank. It is a fair assertion that more than half the presidents during the first century of the Republic were men who would now be entirely forgotten were it not for the fact that they once held the highest office in the gift of the people.

But the presidency of the United States has not been unique in its frequent appeal to mediocrity. On the roll of the English prime ministers one can also find a fair proportion of second-rate statesmen. Among the various prime ministers from the accession of Walpole to the restoration of Baldwin there are hardly more than half a dozen who meet the standard which Lord Bryce set up in relation to the American presidency. Walpole, the two Pitts, Peel, Palmerston, Disraeli, and Gladstone exhaust the list. Possibly Canning and Salisbury might be added. But North, Newcastle, Grenville, Rockingham, Liverpool, and Campbell-Bannerman—they were neither more able nor more striking in personality than John Adams, John Quincy Adams, James Monroe, William H. Harrison, or William McKinley. The Duke of Wellington was a valiant soldier; so was Grant; but the one proved no better than the other when entrusted with the responsibilities of high civil office. There have been great men in both positions, and men of mediocre quality too. In both countries the average has been higher than in France or Italy. The matter is one on which much might be written, but this is not the place for it.

Big and
little states-
men.

The king chooses the prime minister, and the latter proceeds to select both the ministers and the cabinet ministers. Ostensibly he has a free hand in making his selections, but there are various considerations of a practical nature which he must take into account. If a new prime minister were to regard nothing but his own personal preferences in constructing a ministry, he would make trouble in the ranks of his supporters. He must see that various interests are represented. For example, he cannot select all the members of his ministry from the House of Commons, taking none

How the
prime minis-
ter selects
his cabinet.

from the House of Lords.¹ Both peers and commoners have figured in every British ministry for two hundred years; but the proportion of the latter has been steadily increasing.² Lords have naturally been more numerous in Conservative than in Liberal or Labor cabinets.

Ministers
must be
members of
parliament.

Every minister of the crown must be a member of parliament, of one House or the other. But this does not mean that he must be a member of parliament at the time of his appointment. Sometimes he becomes a member after his appointment to the ministry. This can be arranged, of course, by making him a peer and thereby giving him a seat in the House of Lords, but the usual procedure is to "open a constituency" by inducing some member of the House of Commons to vacate his seat and make way for the newly-appointed minister. This entails a special election (or bye-election) to fill the vacancy, and the newly-appointed minister becomes a candidate at this bye-election. He can do this the more easily because neither law nor custom in Great Britain requires that a candidate for the House of Commons shall live in the constituency which he seeks to represent. When, therefore, a prime minister desires to include some outsider in his ministry he arranges that a vacancy shall be created in a safe constituency. The member who gives up his seat is sometimes rewarded for his generosity by being made a peer, or by being given some dignified office which does not necessitate his sitting in parliament. The newly-appointed minister goes to the scene of the bye-election, gets himself nominated, and is usually elected. The prime minister so arranges it with the party organization. But the plans sometimes miscarry and the constituency does not turn out to be so "safe" as was assumed.

The old rule
as to vacat-
ing a seat on
appoint-
ment to the
ministry.

Until a few years ago it was a rule that any member of the House of Commons who accepted a ministerial post thereby vacated his seat and had to go back to his constituency for reëlection. The origin of this rule is interesting. Back in the days when the kings of England took an active part in politics it was their practice to seek control of the House of Commons by appointing various influential members to offices of honor and profit in the gift of

¹ There is a statutory provision which virtually requires that both Houses shall be represented in the cabinet. It prohibits more than five principal secretaries of state and five undersecretaries from sitting in one House at the same time.

² In the first cabinet of George III, no fewer than thirteen of the fourteen members were peers. It was not until after the Reform Act of 1832 that commoners began to get an equal share of representation in the ministry. Since that time they have usually constituted half or more than half the cabinet.

the crown. This constituted a species of refined bribery. The member of parliament took the king's bounty, became obligated to him, and thereafter voted with the king's friends. But parliament grew resentful of this practice and eventually undertook to get rid of it by passing a statute which provided that any member of the House of Commons who accepted a position of profit from the crown should thereby lose his seat.¹

As this statute applied to newly-appointed ministers as well as to other officials of the crown, it involved a serious interference with the course of public business. For whenever a new ministry took office it became necessary for several of them (those who were members of the House of Commons) to go back to their respective constituencies and get themselves reelected. And this notwithstanding the fact that they had been elected to the House only a few days before. The requirement was suspended by act of parliament during the world war, and in 1919 the rigor of the rule was permanently softened by another act which provides that acceptance of a ministerial post within nine months after the issue of the writs for a general election shall not compel the new minister to vacate his seat.² This simplifies matters in the case of a ministry which comes into office soon after a general election, but as respects changes in the ministry which take place after nine months the old rule still applies. On accepting office the new minister must go home and get himself reelected.

The new provision.

In forming his cabinet the prime minister must also have regard for geography. He cannot choose only Englishmen, or Scotchmen, or Welshmen, or Ulstermen. Sentiment and tradition demand that he recognize the various parts of the kingdom. He must strive to make his cabinet as broadly representative as possible—having regard to sectional, social, religious, economic, and also to some purely personal considerations. It is an unwritten law of British politics, moreover, that men who have served in previous ministries of the same political party have a priority of claim if they are still in active political life. Likewise it is understood, quite naturally, that the men who have been the most effective parliamentary critics of an outgoing cabinet are entitled to places in the incoming one. Moreover there are considerations of party welfare to be kept in view. Recognition must be given to the different factions in the party if there are such, as is usually the case. Occa-

Other considerations which influence the prime minister in making his selections.

¹ 6 Anne, chap. 7. ² The Re-election of Ministers Act (9 George V, chap. 2).

sionally one political leader refuses to enter the ministry unless some rival is kept out.

Every ministry is to some extent a compromise.

All in all, the process of making a new ministry gives opportunity for the exercise of all the tactical skill that a statesman can command. The prime minister has about fifty ministerial offices to pass around—with at least two hundred and fifty receptive souls waiting eagerly for a call to serve their country. Every ministry is to some extent a compromise. Never does it represent exactly what the prime minister would do if he had a free hand. His problem is to select from among the availables those whom he thinks can be woven into a well-balanced unit. As one American writer has said, he is like a child trying to construct a figure out of blocks which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together.

Distributing the portfolios.

Nor are the prime minister's worries confined to the problem of determining who shall be included in the ministry. The distribution of offices, or portfolios as they are called, must also be made among those who are taken in. In this connection the prime minister takes into account each minister's soundness of judgment, his skill as an administrator, and his ability to hold his own in the House of Commons whenever his work is brought under criticism by the Opposition, as it is bound to be. Some heed must also be paid to each minister's own preferences, especially in the case of those who are to occupy the higher positions. Yet such personal preferences cannot always be respected. In some instances the prime minister's decisions are virtually made plain by the logic of the situation. To such an extent is this true that the newspapers, even before the process of cabinet-making has begun, are sometimes able to forecast quite accurately just what the line-up will be when the list of ministers is finally revised and presented to the king. For himself the prime minister usually takes the position of first lord of the treasury because this office has no considerable duties attached to it and its occupant is left free for his duties of leadership. As a practical matter he must assume some portfolio because there is no salary attached to the position of prime minister. His remuneration comes to him in the other capacity.

Has the monarch any influence upon the selections?

Must the prime minister take into account the wishes of the monarch in picking his ministerial associates and assigning them their offices? Under all ordinary conditions the answer is *No*. It is hardly conceivable that a British king would nowadays de-

cline to accept anyone whom his prime minister insisted upon recommending to him. But it has not always been so. Queen Victoria on one occasion criticised a prime minister's selections and is believed to have successfully objected to the inclusion of certain statesmen who were distasteful to her. She claimed, and exercised, a woman's privilege. To-day a monarch would be very loath to inject his own personal feelings into the process of cabinet-making. He is assumed to be a neutral in politics, and to have no personal feelings in that sphere.

In selecting a ministry the prime minister also determines how many of his colleagues shall constitute the inner ministerial circle known as the cabinet, for the size of the cabinet is not rigidly fixed. Such ministerial posts as those occupied by the chancellor of the exchequer, the lord chancellor, the first lord of the admiralty, the minister of health, the president of the board of trade, and the secretaries of state for foreign affairs, for war, for India, for the dominions, for the colonies, and for the home department—these regularly carry cabinet rank with them. Other portfolios, such as those held by the secretary for Scotland, the secretary of state for air (i.e., military and naval air forces), the minister of transport and the minister of labor are usually included also, while some others such as the first commissioner of works are occasionally included.¹ The remaining ministers are usually left out, but one or more of them may be taken in at any time if the prime minister sees any good reason for doing so.

In determining the size of his cabinet the prime minister is guided largely by usage, but also to some extent by the program of legislation that he has in view. He desires to have in the inner circle all those with whom he must work intimately on the important measures. It sometimes happens, moreover, that a veteran statesman is given a post which is not of cabinet rank by reason of his desire to be relieved of heavy administrative duties, yet such a man's presence at cabinet meetings may be extremely desirable. In that case he can be included despite the secondary post that he

What ministers constitute the cabinet:

1. Usage.

2. Special circumstances.

¹ The following ministers constitute the cabinet at the present moment: Prime Minister and First Lord of the Treasury, Lord Privy Seal, Lord President of the Council, Lord Chancellor, Chancellor of the Exchequer, the six principal Secretaries of State, viz: Foreign Affairs, Home Affairs, War, Colonies, India, and Air, First Lord of the Admiralty, President of the Board of Trade, Minister of Health, President of the Board of Education, Minister of Agriculture and Fisheries, Minister of Labor, Secretary for Scotland, Postmaster-General, Chancellor of the Duchy of Lancaster, and First Commissioner of Works.

holds. It is even possible to include in the cabinet one or two members who do not hold any administrative post at all (ministers without portfolio, they are called), but this practice is less common than it used to be.¹

General
functions of
the cabinet.

In discussing the work of the British cabinet a distinction should be made between individual and collective functions. Each member of the cabinet is responsible to the crown, to his colleagues, and to parliament for the conduct of some branch of the national administration. These branches of administration correspond, for the most part, to the departments which are headed by members of the President's cabinet in the United States. Collectively the members of the cabinet form the great standing committee, the executive committee of parliament. Parliament is assumed to reflect the will of the people, and the cabinet is charged with the function of carrying this popular will into effect through its advisory control of the crown.

The prime
minister as
primus in-
ter pares.

The prime minister, even when he has a sinecure portfolio, is a very busy man. He is supposed to exercise a general supervision over the work of his twenty colleagues. He is the umpire in the case of any differences of opinion among them. When he and one of his ministers find themselves unable to agree, it is the minister and not the premier who resigns. A famous case was that of Lord Randolph Churchill (father of Winston Churchill) who resigned from Salisbury's cabinet in 1886 because he disagreed with the prime minister on a matter of expenditure for armaments. On the other hand the prime minister cannot ride roughshod over his colleagues. He is their leader, not their boss.² He must carry them with him, for they have friends in the House of Commons and dissension in the cabinet would soon spread to the majority in that chamber. Yet his power is enormous—so long as he remains prime minister. On his advice the royal prerogative lives and acts as powerfully as it did in the days of the Tudors. In theory a prime minister has no right to tell the home secretary or the postmaster-general that this or the other thing must be done. But he can ad-

¹ All ministers, whether members of the cabinet or not, receive substantial salaries. These range from 2,000 to 10,000 pounds per year, depending upon the importance of the post. The salaries are voted by parliament each year and may be reduced at any time. Some ministers, such as the attorney-general, receive certain fees in addition to their salaries and these fees often total a very large sum.

² The prime minister's position is recognized by law, even if that of the cabinet is not. An act of parliament, passed in 1906, fixed his place of precedence for official ceremonies.

vise the crown to dismiss any minister and select a new one. And he can do this very delicately, by writing as a prime minister once did to Charles James Fox, that "the king has been pleased to issue a new commission for the office of lord high treasurer in which I do not perceive your name."

Next to the prime minister the chancellor of the exchequer is the most conspicuous member of the cabinet. Public administration is largely a matter of opening or closing the public purse, and the chancellor is the real head of the British treasury although nominally this institution is controlled by a treasury board of five members.¹ This board, however, is one of the numerous shams in British administration. It never meets, or virtually never. All its functions are turned over to the chancellor of the exchequer. His duties include practically all those which pertain to the secretary of the treasury at Washington, and more besides. He has charge of collecting the revenues and of paying out all funds appropriated by parliament. He has various duties connected with the currency and the government's relations with the Bank of England.

The chancellor of the exchequer.

In addition he prepares the annual budget, lays it before the cabinet, and after having received the approval of this body he personally introduces it in the House of Commons. The chancellor of the exchequer is always a member of the lower chamber because every financial measure including the annual budget must be first debated there. The budget is laid before the House of Commons in a budget speech, which frequently occupies several hours and is one of the outstanding speeches of the session. It is from this speech that the public gets its first information concerning new taxes and other proposed changes in the government's fiscal policy. Hence the chancellor of the exchequer must needs be a clear, ready, and fluent speaker, able to hold his own on the floor. This is even more important than a knowledge of public finance, for the chancellor can obtain from his subordinates all the expert advice that he may require in financial technique.

His work on the budget.

The chancellor of the exchequer should not be confused with the lord chancellor. The lord chancellor of Great Britain occupies a post which has no close analogy in the United States. He presides

The lord chancellor.

¹ The first lord of the treasury (who is usually the prime minister), the chancellor, and three junior lords. For a full account of the treasury, its organization and workings, see T. L. Heath, *The Treasury* (London, 1927).

in the House of Lords and is usually a member of that body. This does not mean that a commoner can never be chosen to the office; any British subject may be chosen by the prime minister and then raised to the peerage. Legally he could preside as lord chancellor without being made a peer. The post of lord chancellor is the highest office in the British judicial system, for its incumbent is the titular head of the Court of Appeal, although in practice he rarely sits there. But he does actually preside at sessions of the law lords when they exercise the judicial functions of the House of Lords.¹ He also recommends to the crown the appointment of judges in the higher courts and himself appoints the justices in the lower tribunals. To that extent he performs duties which are somewhat analogous to those of the attorney-general in the United States.

The "principal secretaries of state":

It is sometimes said that the British cabinet contains several "principal secretaries of state."² That statement is literally true, but it carries a misleading impression to the American mind. The British cabinet does not contain several secretaries of state in the American sense. It is merely that the term secretary of state forms part of the title in the case of several principal ministers whose functions cover a varied range.

1. Foreign affairs.

First, there is the secretary of state for foreign affairs. This minister is head of the British foreign office. As such he is the official adviser of the crown in its dealings with foreign powers; he supervises the conduct of all diplomatic relations, negotiates treaties, and recommends appointments in the diplomatic service. His duties correspond in a general way to those of the secretary of state at Washington. Due to the vastness and complexity of Great Britain's foreign interests the position of secretary of state for foreign affairs is one of great importance, so much so that the prime minister has occasionally taken this portfolio into his own hands. But the British foreign secretary is not, like the American secretary of state, the ranking member of the cabinet.

2. War.

The secretary of state for war occupies a post which exists in all countries, and with substantially similar functions. His department has general supervision over the land forces of the kingdom. The air service is not under his control but is committed to the

¹ See *below*, p. 280.

² The secretaries of state for Foreign Affairs, for the Home Department, for War, for the Dominions, for the Colonies, for India, and for Air. The statutes do not specify these titles but refer only to "a secretary of state."

care of a separate department under a secretary of state for air. On the other hand, and somewhat curiously, there is no secretary of state for the navy—which has been England's first line of defense. Naval affairs are under the supervision of an admiralty board (the successor to the lord high admiral of bygone days). This board is made up of a first lord of the admiralty, four or more sea lords (who are regular naval officers of high rank), one civil lord, and various secretaries. In the deliberations of this board, however, the influence of the first lord of the admiralty is virtually controlling. And it ought to be, for he shoulders the entire responsibility to parliament for every action of the admiralty board.

The secretary of state for air occupies a post that was created in 1917. Before the world war the air forces of Britain were divided between the army and the navy, as they still are in the United States. Coöperation between the two was arranged through a joint air committee which in 1916 became a regular board with a president at its head. This, in turn, gave way to an air council of which the secretary of state for air is now the controlling head.

The other principal secretaries have departments which find no close analogy in the American scheme of national administration. The secretary of state for the home department, or home secretary as he is more commonly called, has to do with many matters of domestic administration, as for example the receiving of petitions for presentation to the crown, the maintenance of peace and order within the kingdom, the enforcement of factory laws, the inspection of municipal police in the boroughs or cities, the direct control of the London metropolitan police, the naturalization of aliens, and the supervision of prisons. He also has general supervision over the registration of voters and the holding of parliamentary elections. Finally the home secretary also advises the crown in the exercise of its pardoning power.¹

The secretary of state for the colonies has charge of the relations between the home government and the governments of the various colonies. Until 1925 the colonial office had to do with the self-governing dominions as well, but in that year a separate office, the dominions office, was created to deal with them. The headship of both the colonial office and the dominions office were combined in the same secretary of state until 1930 when they were separated.

¹ For a full account of home office activities see the monograph by E. Troup, *The Home Office* (London, 1925).

3. Air.

4. Home affairs.

5. Dominions, Colonies, and India.

The cabinet now contains both a secretary for the dominions and a secretary for the colonies. The relations between London and the governments of Canada, Australia, South Africa, and the Irish Free State are carried on through the dominions office. Jamaica, Malta, Hongkong, and the rest are dealt with through the colonial office. India is under the supervision of a separate department, the India office, headed by a secretary of state for India whose duties will be explained later. There is a secretary for Scotland, but he does not rank as a secretary of state.

Other cabinet ministers.

There is no unified department of justice in Great Britain, as in continental countries. The work is divided among four ministers, namely, the lord chancellor, the home secretary, the attorney-general, and his colleague, the solicitor-general. The duties of the other ministers, such as the ministers of labor, health, and transport, the presidents of the board of education and the board of trade, the minister of agriculture and fisheries, and the lord president of the council, are indicated by the designations of their respective offices, save in the case of the minister of health. His administrative duties are concerned not only with the maintenance of the public health but with the supervision of poor relief and local government. His office took over, in 1919, the functions which had previously been performed by the local government board.¹

The confusion of ranks, titles, and offices.

There is neither symmetry nor logic in the organization of these administrative departments. Naturally so, for in their present form and functions they are the outcome of a long development, partly haphazard and partly directed by specific acts of parliament. Taken together they make a system which is full of inconsistencies and unrealities, with phantom boards which exist only on paper and officials exercising vast functions which have accrued to them by usage but have no warrant in law. An American, accustomed to an administrative organization that can be clearly charted on a blueprint, stands amazed at this welter of first lords and junior lords, principal secretaries and secretaries who are heads of their offices but do not rank as principal secretaries, chancellors and presidents of boards, ministers of this and that, lords privy seal and commissioners. But the machinery functions, and on the whole it functions well. From time to time proposals have been made to overhaul and simplify it; but nothing save piecemeal reorganization has resulted.

¹ See below, chap. xvi.

So much for the cabinet ministers as responsible individual administrators, as heads of their various departments. They also form a body, a cabinet, with collective functions and responsibility. This cabinet, as British writers often tell us, is the pivot on which the whole political machinery turns. It makes the great decisions. Technically it is merely a committee of the privy council, made up of those privy councillors whom the prime minister chooses to call, assembling at his behest, and discussing only such business as he may permit to come before it. Actually it is the steering wheel of the ship of state. It sets the direction of national policy. In theory it is responsible to the House of Commons for everything that it does; but in reality the House acts in accordance with its leadership and direction.

The cabinet as a collective organ.

Regular meetings of the cabinet are held once a week or oftener in normal times, usually on midweek mornings. Special meetings are convened at the call of the prime minister, and when serious emergencies arise they are held at any hour of the day or night, often on very short notice. It is customary for the cabinet to omit its regular meetings during the parliamentary recess, the members coming together only when needed. The meetings ordinarily take place at the prime minister's official residence, No. 10 Downing Street, or occasionally in the prime minister's room at the House of Commons. Members do not sit in any order of precedence; each picks his own seat and occupies it regularly. Smoking at cabinet meetings is strictly tabooed, and some ministers have looked upon this as a rough deprivation. Before each regular meeting a batch of papers relating to the business is sent to each member. An important innovation of post-war days is the frequent holding of committee meetings at which committees of the cabinet deal with special subjects or groups of subjects. These committees, of course, have no final powers. They merely report to the whole cabinet. A considerable amount of cabinet business is also virtually settled by private conference of the prime minister with a few of the more influential members before the cabinet meets. It is a tradition, moreover, that the prime minister never consults the cabinet about filling a vacancy in its own ranks, and rarely does he do it about other appointments—for example, to judgeships or governorships of colonies.

Cabinet meetings.

Prior to 1917 the cabinet had no secretary and kept no records. This curious omission had continued from the earlier days when

The secretariat.

the cabinet was a mere clique of the privy council meeting secretly. The prime minister simply jotted down some notes of the proceedings for his own use or for the information of the king. Each member of the cabinet also noted matters relating to his own department. But David Lloyd George, who was prime minister in 1917, thought this method too loose and unbusinesslike. So he appointed a regular secretary to the cabinet with the function of putting business into shape for the meetings, keeping the records, and having the custody of all official documents. This secretarial establishment was rapidly enlarged until it had more than a hundred employees and its expansion evoked much adverse criticism in parliament.

Its present
functions.

When the Bonar Law ministry came into office (1922) the cabinet secretariat was greatly reduced in personnel; but it still remains in existence and has apparently become a permanent part of the governmental machine. Its functions and powers have never been defined, but in general it prepares the agenda for cabinet meetings, gathers data for the cabinet and its committees, keeps the records, and does whatever else the cabinet asks it to do. The head of the secretariat, or his principal assistant secretary, attends cabinet meetings and takes the minutes. In all respects other than in secretarial service the cabinet holds to its traditional informality. It has no rules of procedure. Not even a quorum is needed to do business; the prime minister can act alone if he chooses.

Secrecy of
cabinet
meetings.

Until a few years ago no announcement of actions at meetings of the cabinet was ever published. Nowadays it is the practice to give the newspapers a brief statement, usually colorless, with an occasional mention of what has been discussed. But it is still accounted an unforgivable breach of etiquette for any member of the cabinet to disclose, either in parliament or out of it, anything that is said at the council table. Etiquette, moreover, forbids a minister (except the prime minister) to take any notes while the meeting is in progress. If there is disagreement among the members, some rumors of it may leak out, but the public does not get the whole story.

Cabinet dis-
cussions.

Most of the cabinet discussions pertain to matters of general policy or to questions which involve the establishment of some important precedent. Routine details which relate to a single department are not usually laid before it. Each minister is supposed to deal with such things on his own responsibility or after

conference with the prime minister alone. A cabinet discussion is not followed by a vote save in very exceptional instances. It does not bind the prime minister. He can advise the crown in the face of an adverse cabinet vote and has done so on rare occasions. On the other hand a prime minister naturally hesitates to act in the face of cabinet disapproval. The recognition of the Southern Confederacy during the American civil war was averted by a majority vote of the cabinet against the opinions of the prime minister, the foreign secretary, and the chancellor of the exchequer (Palmerston, Russell, and Gladstone—surely a weighty trio). If the discussion discloses a marked difference of opinion among the ministers, the usual practice is to leave the question open until some compromise can be reached, for the action of the cabinet, whatever it is, must always be outwardly unanimous. No divided counsel can be tendered to the king, nor can the cabinet go before parliament with a division in its ranks. It must act as a unit. If any member, after a decision has been reached either by majority vote or by the prime minister's decision, feels that he cannot support this outcome, it is his duty to resign and make way for someone who feels differently. This solidarity is essential to the effectiveness of the cabinet's leadership in parliament.

The most important collective function of the cabinet is to formulate the policy of the nation and the legislative program for each session of parliament. The various items in this program are then introduced as government measures with the prestige of a unanimous cabinet behind them. Not only this but the measures are advocated, explained, and defended upon the floors of both chambers by members of the cabinet, and the votes of the party majority are whipped into line to put them through. Not all bills are brought before parliament by the cabinet, of course; but practically all measures of general importance must come up through his channel or they have virtually no chance of being passed. On the other hand when the British prime minister and his cabinet announce that a bill will be introduced, or a new tax levied, or a treaty concluded, or some new battleships built—the announcement of their decision virtually settles the matter. Parliament must accept their decision or get a new ministry from top to bottom. One does not need to remind any American reader that the president and his cabinet have no such assurance for the finality of their decisions.

The cabinet's leadership in legislation.

Its contrast
with the
American
cabinet in
this respect.

Right here, in fact, is the most conspicuous difference between the English and the American process of lawmaking. In the United States the cabinet does not have any official responsibility for the preparation of government measures, and indeed Congress is disposed to resent being told by the executive what it ought to do. Members of the American cabinet do not sit in either House of Congress and hence cannot direct the debates as the English ministers do. They have no assurance that a majority in Congress will stand behind anything that they propose. This does not mean, however, that the British system is superior to the American. Both have their merits and their shortcomings. The British plan makes for firm and effective leadership, but it also results in a good deal of legislative dictatorship. It enables a few men, a dozen or less, to commit the kingdom to legislation which parliament often has no practicable alternative but to accept.¹ The American plan often results in rebuffs to the executive, and to delays and unsatisfactory compromises; but it is proof against legislative despotism in all its forms.

Ministerial
responsibility.

Much has been written about ministerial responsibility as it exists in British government. No principle is more firmly established and none is of more far-reaching importance. It is not a simple principle, easy to understand, for it has a threefold application.

Its three
phases:

1. Responsibility to
the king.

First of all, the English ministers are responsible to the king. This is, for the most part, a merely technical responsibility. The king cannot dismiss a member of the cabinet in the way that the President of the United States can do it. An English minister, so long as he possesses the confidence of the premier and the House of Commons, cannot be ousted by the king without bringing the whole mechanism of the government to a standstill. The entire cabinet would resign in protest; a majority in the Commons would support its action; a general election would have to be held; and the king would be giving a hostage to fortune. So ministerial responsibility to the king is not a very serious affair. Yet there is a measure of such responsibility. The monarch must be kept informed. Queen Victoria once rebuked Lord Palmerston by writing to him that "she expects to be kept informed of what passes between him and

¹On this point see the discussion of "Cabinet Dictatorship" in Sidney and Beatrice Webb's, *Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 71-74; also G. D. H. Cole, *Labor in the Commonwealth* (London, 1919), pp. 101-104.

foreign ministers before important decisions are taken based on that intercourse." A dozen years later she requested changes in a despatch which Lord John Russell was about to send to the United States with reference to the Trent affair. Gladstone wrote that the monarch's "entire disconnexion from the bias of party" gave her an undeniable claim to be consulted.

Second, the members of the cabinet are responsible to one another. This is necessarily so because solidarity is the essence of the cabinet system. So it is a matter of each for all and all for each. The fault of one minister may bring the wrath of the Commons upon the ministry as a whole. For this reason every minister is constrained, not merely as a matter of prudence but of honor, to seek the opinion of his colleagues before taking any action that might evoke criticism. This principle of intracabinet responsibility was definitely established in 1851 when Lord Palmerston, without consulting his colleagues, expressed to the French ambassador his approval of a coup d'état which had taken place in France.¹ For doing this Palmerston was dismissed from the ministry. A few years ago (1922) the secretary of state for India was forced to leave the cabinet because he made public an official despatch without consulting his colleagues. On the other hand, so long as a member of the cabinet acts only in accordance with a policy which has been approved by the whole body, he has nothing to fear. His fellow ministers in the cabinet will stand solidly behind him. The whole strength of the majority in the House of Commons will be rallied to his support if any attack is made upon him. To drive him from office would then necessitate forcing the whole ministry out. That is a drastic measure for a House of Commons to take, and nothing but a very unusual situation would ever induce such action.

Finally, and most important, the members of the ministry are responsible to the House of Commons. That is what the term ministerial responsibility really means. There is no statutory requirement that a ministry shall go out of office whenever it loses the support and confidence of a majority in the House, but by a custom which has now prevailed for nearly two hundred years it is bound to do so. The ministry must always be able to demonstrate, by vote of a majority in the Commons, that it possesses the confidence of the country. Loss of this confidence means loss of office.

¹ See *below*, chap. xx.

2. Responsibility of the ministers to one another.

3. Responsibility to the House of Commons.

How a ministry can be ousted.

There are various ways in which the House of Commons may show its lack of confidence in the cabinet and may thereby force it to resign. When the financial estimates are under consideration the House may vote to reduce the salary of a minister. Cabinet solidarity then requires his colleagues to defend him against this attack. Or the House may reject some government measure. An amendment to such a measure does not necessarily imply want of confidence unless the cabinet opposes the amendment and makes an issue of it. Amendments brought forward in the House are often accepted by the minister in charge of the bill. Again, the House may undertake to pass some bill which the cabinet opposes, and the issue may be made one of confidence in the government. Finally, if the House is dissatisfied with the cabinet's general policy, without reference to any particular measure, it can at any time pass a resolution expressly declaring its want of confidence. British cabinets, as a matter of fact, have rarely been forced to resign during the past hundred years by reason of an adverse vote in the House of Commons. They have gone out of office, for the most part, as the result of adverse action by the people at the polls. On the other hand a decision to dissolve parliament and call a general election has sometimes been dictated (as in 1924) by a setback in the House. Snap votes and mishaps due to the absence of ministerial supporters do not entail the cabinet's resignation. The cabinet has at all times the privilege of demonstrating, by proposing a resolution of confidence, its control of a majority in the House.

The cabinet's right of appeal to the people.

It is the privilege of the cabinet, when it finds itself faced by defeat in the House, to make an appeal to the people. In other words the prime minister can advise the king to dissolve parliament and order a general election. During the election campaign the ministry continues in office, but if the result of the polling is unfavorable it does not usually wait for parliament to assemble. The practice is for the ministers to hand over their seals of office and make way as quickly as pending business can be cleaned up. This is a matter of a few days, or, at most, a few weeks. Thereupon the king sends for the leader of the victorious party and asks him to form a new ministry. This summons, of course, is not unexpected, and the new prime minister usually has the organization of his cabinet lined up in his own mind before the royal invitation arrives.

Ordinarily the cabinet is made up of members drawn from one political party, but in times of national emergency, when it is desired to have all the parties work together, a coalition cabinet may be formed. When the world war began in 1914 a Liberal ministry headed by Mr. Asquith was in power. A year later, when the immensity of the struggle became recognized, the prime minister suggested that his parliamentary opponents should be represented in the cabinet, and they accepted. A coalition ministry, made up of Liberals, Conservatives, and Labor members, was accordingly put together. Mr. Asquith continued as leader until 1916 when he was replaced as prime minister by Mr. Lloyd George. This coalition continued for a time after the war was over, but went to pieces in 1922.¹ Thereupon a general election was held and the Conservatives were successful. But their tenure of power was brief, for they went to the country in 1923 on the issue of inaugurating a protective tariff and were defeated.

Coalition
cabinets.

The general election of 1923 put a new face on the practice of ministerial responsibility, for no one of the three parties now controlled a majority in the Commons. The Conservatives had the largest group of members in the House, with the Labor party second, and the Liberals third. Hence the Conservatives were outvoted in the House of Commons when it reassembled and their cabinet was forced to tender its resignation. Thereupon the leader of the Labor party was summoned by the king and proceeded to construct a ministry. For nearly a year this Labor ministry carried on, although it did not have a unified majority of the Commons behind it. On appropriation bills, and on other important measures, the Liberals gave it support. But it existed on sufferance and could not carry into effect the pledges that had been made in the Labor party's platform. Finally, in the autumn of 1924, the Liberals withdrew their support on a vital question and thereupon the Labor ministry advised a new election. As a result of this election the Conservatives were returned to power with a majority over the other two parties combined and for a time the old arrangement of a ministry supported by a solid majority was restored. But not for long, because another election came in 1928 and once more no single party obtained a majority in the House. The Labor party, having done best of the three, was again given

The minor-
ity cabinet
of 1923-
1924.

¹ For some interesting data relating to the coalition cabinet see E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chap. ii.

the reins, having been again assured that the Liberals would help on vital issues. Since 1928, therefore, a Labor ministry has been "in office but not in power" as the saying is.

Ministerial responsibility and the two-party system.

Ministerial responsibility does not postulate a two-party system. It can be maintained, after a fashion, when there are several party groups in the legislative body, as witness the experience of France. But the principle of ministerial responsibility can be much more smoothly operated when there are only two parties, one controlling the government and the other constituting "the opposition." Parliamentary government works best, indeed, when the ministry has a solid, working majority behind it, but not too large a majority. A strong, united, vigorous opposition keeps a ministry on its mettle and makes its responsibility real. The history of parliamentary government indicates that cabinets which are formed from a single party, and are supported by a single party, do far better work than those which represent coalitions and are supported by blocs. The future of effective ministerial responsibility in England is thus bound up with the question whether the country is going to maintain two strong political parties or more than two.

The evolution of the cabinet system may be followed in J. F. Baldwin, *The King's Council in the Middle Ages* (New York, 1913); A. V. Dicey, *The Privy Council* (London, 1887); Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902); and the various books on the privy council which are listed on p. 38. Developments during the war are narrated in John A. Fairlie, *British War Administration* (New York, 1919).

The organization, functions, and responsibility of the cabinet are dealt with in all the treatises and textbooks on English government, for example, Anson's *Law of the Constitution* (see above, p. 14); Lowell's *Government of England*, Vol. I, chaps. ii-iv; Ogg's *English Government and Politics*, chaps. vi-ix; Marriott's *English Political Institutions*, chaps. iv-v; Low's *Governance of England*, chaps. ii-ix; Courtney's *Working Constitution of the United Kingdom*, chaps. xii-xiii; Bagehot's *English Constitution*, chaps. i, vi, viii-ix; and Jenks' *Government of the British Empire*, chap. v. Special mention should also be made of the discussions in Sir John A. R. Marriott, *Mechanism of the Modern State*, Vol. II, chap. xxv; and Ramsay Muir, *How Britain is Governed* (New York, 1929), chap. iii. An older book, still possessing value, is R. H. Gretton, *The King's Government* (London,

1913). A small volume entitled *Whitehall* by C. Delisle Burns (Oxford, 1921) gives many interesting details about the work of the various ministerial departments, and full accounts may be found in the various volumes which are included in the Whitehall Series (published by Messrs. G. P. Putnam's Sons)—for example, T. L. Heath, *The Treasury*, M. C. C. Seton, *The Indian Office*, E. Troup, *The Home Office*, H. C. Smith, *The Board of Trade*, A. Newsholme, *The Ministry of Health*, Sir Lewis Amherst Selby-Bigge, *The Board of Education*, etc.

Some interesting documents are printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925).

Sidelights on the workings of the cabinet system may be found in the memoirs and biographies of the various premiers and cabinet ministers—Gladstone's *Gleanings from Past Years*, John Morley's *Life of Gladstone*, Monypenny and Buckle's *Life of Benjamin Disraeli*, Earl Grey's *Memoirs*, Cecil's *Life of Salisbury*, Asquith's *Fifty Years of British Parliament* and so on.

CHAPTER V

THE CIVIL SERVICE AND ITS WORK

Bureaucracy has become, during the last century, and especially during the last generation, a far more potent and vital element in our system of government than the textbooks realize. It has, indeed, become the effective and operative part of our system. The power of this bureaucracy, the permanent civil service, is to be found not only in administration, but also in legislation and finance: it not only administers the laws, it largely shapes them; it not only spends the proceeds of taxation, it largely decides how much is to be raised and how it is to be raised.—*Ramsay Muir*.

The amateur at the top.

Many years ago Walter Bagehot wrote in one of his facile epigrams that a minister's business is "not to work his department but to get it worked." That is a self-evident truth. A newly-appointed minister takes charge of a great department like the British colonial office, with jurisdiction extending to the ends of the earth. He is chosen for this post by the prime minister not because he knows anything about colonies but because he is an old party war-horse, or a nimble debater on the floor of the House, or because someone is needed in the cabinet from the northern counties, or for some other such reason. Between attending sessions in parliament, going to cabinet meetings, keeping all manner of public engagements, and joining in the London social whirl he has an hour or two a day at his desk to master the problems of a hundred scattered dependencies from Jamaica to Hongkong. How does he manage to do it? The answer is that his staff of permanent subordinates, the bureaucracy, the civil service, are the ones who do it for him.

His functions.

In a word the minister's function is not to do the job but to get it done. That, of course, is the task of every great administrator whether in public or in private business. The British minister is responsible for getting this work done right, and he may be called to account by the House of Commons at any time, but the work calls for expert skill and the minister is not an expert. He lays no claim to that qualification. In nine cases out of ten he has no professional qualifications for the headship of the department to

which he is assigned. The British war office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister, and the board of trade by a university professor. One would suppose that in the treasury at least there would be a minister familiar with the intricacies of public finance. But no,—the chancellors of the exchequer have often been lawyers, country squires, or professional politicians. "A youth must pass an examination in arithmetic," says Sir Sidney Low, "before he can hold a second-class clerkship in the treasury; but the chancellor of the exchequer may be a middle-aged man of the world who has forgotten what little he ever learned about figures, and is innocently anxious to know the meaning of 'those little dots' when first confronted with the treasury accounts worked out in decimals." ¹

This does not mean, however, that members of the British cabinet are men of mediocre attainments. The successful minister, indeed, must be something of a paragon. He must be a resourceful man or he would never have risen so far,—a man of sense and practical capacity, with the knack of keeping in touch with public opinion. He must have a wide knowledge of public affairs. He must be able to think straight and to express himself clearly, for almost daily he will be called upon to answer questions and make explanations in parliament. Finally, he must be able to decide things quickly and be right at least half the time. He must be able to sift good advice from bad when he hears it. He must content himself with laying down the general lines of departmental policy, letting his subordinates supply all the technical skill that is needed to carry these principles into operation. This means, according to one critical observer, that "unless he is either a self-important ass or a man of quite exceptional grasp (both of which types are uncommon among successful politicians) he will, in ninety-nine cases out of a hundred, simply accept their views and sign his name on the dotted line." ²

The qualities that he needs.

In the nature of things these subordinates have the minister at their mercy. They have had far more experience than he; sometimes they have more ability. Moreover, they have dealt with ministers before and know the species. They mobilize upon him en masse. Whichever way he turns they have arguments, objections, precedents, and suggestions—all cut and dried for him. When they pre-

His dependence on his subordinates.

¹ Sir Sidney Low, *The Governance of England* (New York, 1917), pp. 201-202.

² Ramsay Muir, *How Britain is Governed* (New York, 1929), pp. 55-56.

sent any matter to him there is usually only one course to pursue unless the minister is ready to re-study it all over for himself. This pressure of the permanent officials upon the minister is almost irresistible except to a man of commanding power and long administrative experience with a prodigious capacity for work.

The Westminster and Washington practice compared.

Englishmen see nothing anomalous in placing unskilled laymen at the heads of departments which have administrative problems of a highly technical sort to handle. Initial unfamiliarity with the job is no barrier to appointment. When Lord Palmerston took the colonial office under his wing many years ago he said to his assistant: "Just come upstairs for half an hour and show me where those confounded colonies are on the map." It is not the Anglo-Saxon theory of government that a major-general should be secretary of state for war or an admiral first lord of the admiralty. On the contrary it is deemed desirable that these highly professionalized departments should have civilians at their head. The same opinion is generally held, and the same practice followed, in the United States, but not in all the countries of continental Europe. In England the doctrine of amateur ministerial control is extended broadly to all the departments, and that has generally been true of the government at Washington, but in recent years there has been a noticeable tendency to depart from it. In America there is a growing demand that the men whom the President chooses for certain cabinet positions shall have some professional qualifications for the departmental work which they are expected to do. There is an increasing insistence, for example, that the secretary of the treasury shall be a banker by training, the secretary of agriculture a "dirt farmer," and the secretary of labor someone who is tagged with the union label.

Is professionalism desirable at the top?

These popular demands would seem to be regrettable. They betoken a failure to grasp a sound maxim of the science of government which is that the work of experts should always be supervised by laymen. When an expert supervises the work of experts there is likely to be friction and disagreement, for it is the habit of experts to disagree. It is also their habit to be unfriendly to new and unusual ways of doing things. Experts like to keep things running in the old ruts. Gladstone once said that he could not remember a single administrative reform which the experts did not oppose when he first suggested it. The idea that the secretary of agriculture ought to be a farmer, moreover, betokens an erroneous idea

of what this official is supposed to be and to do. He is not chosen to look out for the interests of the American farmer but for the interests of the American people. The chancellor of the exchequer at Westminster does not represent the bankers of England but the people of England. The chief qualification of a department head, in any country, is that he shall be ready and able to realize the interest of the whole people, not that he shall be professionally competent to promote the interest of any particular class.

The English have held firm to this principle. In each department the minister and his highest subordinates are strictly political officers. They are the incarnation of responsibility, not of expertness. Hence they hold their posts so long, and only so long, as their party remains in power. When a cabinet goes out of office they go with it. They bear to the prime minister a relation not widely different from that which the secretaries and assistant secretaries in the national departments bear to the President of the United States, inasmuch as the tenure of each is bound up with that of the whole administration.

The "political" heads in England.

But the subordinate officials who make up the permanent civil service are in a different position. They are non-political. Hence they are not responsible to parliament, and they do not lose their positions when a cabinet is turned out of office. If the House of Commons has any fault to find with the conduct of a department it turns upon the minister although he may not deserve the blame. Conversely, if there is any credit being passed out for the conduct of a department the minister gets (and takes) it all, although he may be similarly undeserving of it. A clear distinction should therefore be made between the *political* and the *permanent* staff of an English department. The former provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular; the other to make it efficient. And the test of a good government is its successful combination of democracy with efficiency.

Their "non-political" subordinates.

The officials who make up the *political* staff of the English administrative departments are known by a variety of titles: ministers, undersecretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, and what not. The chancellor of the exchequer, for example, has with him in the treasury not only a first lord who is its titular head, but several junior lords, a parliamentary secretary, a patronage secretary (who serves as chief

The political staff is small.

ministerial whip in the House of Commons), and a financial secretary. The secretary of state for foreign affairs has as his chief political coadjutor a parliamentary undersecretary, in addition to a permanent undersecretary whose position is not political. These lesser lights are members of the ministry although not members of the cabinet. All of them are political officers with seats in parliament, and they go out of office when the cabinet resigns.

What the permanent officials do.

But this political staff, comprising only sixty to seventy members in all, forms a very small proportion of the entire administrative personnel. Several hundred times more numerous is the permanent staff, officially known as the permanent civil service, or by its critics as the bureaucracy. These officials are not politicians, do not sit in parliament, and are chosen for their administrative capacity alone. They must take no part in political campaigns and they do not change when a ministry goes out of office. Public administration is their life work. Cabinets and parliaments come and go; but the permanent staff remains. Numbering nearly three hundred thousand, and ranging from high administrative officers down to typists and clerks,—these men and women collect the revenue, keep the accounts, compile the reports, enforce the laws, maintain the public institutions, and translate policy into action throughout the realm. Together they make up the civil service of Great Britain, entrance to which is by competitive examination, promotion on a basis of merit, and aloofness from politics the condition of permanent tenure.

Origin of the British civil service

The East India Company.

The story of the British civil service ought to have at least a brief narration in every book on the science of government, for it teaches some instructive lessons.¹ The story begins with the tribulations of the British East India Company more than two hundred years ago. This great commercial organization, with its numerous trading posts in the Orient, had to employ large numbers of young men as traders, bookkeepers, and clerks. The company paid good wages and, what was more, its employees were able to make money by indulging in private trade on their own account. Some of them made large sums in this way. At any rate the idea of getting to India, earning a good salary there and perhaps a fortune by speculation as well—that idea appealed to many thousands of young

¹ It was originally named the *civil* service to distinguish it from the *military* service. The best outline of its development is that given by Robert Moses in his *Civil Service of Great Britain* (New York, 1914).

Englishmen in the early years of the eighteenth century. Everybody clamored for an appointment, with the result that the applications far exceeded the vacancies. And what happened is what always happens under such circumstances. Influential stockholders and others brought pressure upon the company's higher officers in order to have their own sons or nephews or other young relatives appointed. Incompetents many of them were, but paternal influence was effective in their behalf and hundreds of younger sons hied themselves off to India, ostensibly to serve the company but in reality to shake the pagoda tree for their own benefit.¹

The Haileybury experiment.

Here was the spoils system in its most malignant form. The whole service in India began to be demoralized. The higher officials of the company sent home a flood of complaints on every ship. In sheer self-defense, therefore, the directors of the company were forced to devise a plan whereby all applicants were required to undergo a period of training before being sent to India. For this purpose a training school was established at Haileybury and there the unfit were weeded out. Haileybury became the only door to appointment and no one was allowed to proceed to India until he had attended for at least four terms and had passed the prescribed examinations. Having a great excess of applicants for admission (despite the fact that patronage plus a qualifying examination still determined who should be admitted), the school was able to raise its standards to a high point; much higher, indeed, than were those of Oxford or Cambridge.² It soon began to be noticed, therefore, that the East India Company was getting more than its share of the best young brains in the United Kingdom and its extraordinary success in building up a great commercial empire was by many attributed to these high standards of selection.

The change of 1853.

Meanwhile, however, the number of political (as distinct from commercial) posts in India grew with the extension of the company's territorial interests and public opinion in England began to rebel against a monopoly of these appointments by a single training school under the control of a commercial company. In

¹ There is a story that Lord Clive, when he managed the company's affairs in India, made it his practice to meet these young fortune-hunters immediately on their arrival. Asking each in turn how much he expected to acquire, Clive paid the newcomer the amount and shipped him back to England.

² One eminent scholar, who later became a professor at Oxford, thus spoke of his own experience at Haileybury: "I soon discovered that if I wished to rise above the level of an ordinary student I should have a task before me to which my previous work at Oxford could only be regarded as child's play."

1853, therefore, parliament abolished the company's right to make these appointments and provided that all subordinate political offices in India should be filled by the crown from an eligible list based on open, competitive examination, with no attendance at any training school required. The school at Haileybury was thereupon closed and the competition thrown open to all British subjects within certain age limits. The adoption of this plan was largely the work of Macaulay, the historian, and it embodied a step of great importance. It paved the way for the abolition of the spoils system and the establishment of competitive examinations in all the home departments of British administration. Reformers argued that a plan which was working so well abroad ought to be given a trial at home. Their agitation succeeded and civil service examinations were inaugurated in 1855. Within fifteen years they were extended to virtually all the departments.

The spoils system is not of American origin.

(The spoils system, in other words the practice of bestowing public offices upon the victors as the reward for their work in winning an election, is commonly thought to be of American origin, with Andrew Jackson as its chief progenitor. But the spoils system did not originate in the United States. It is not a native son among American institutions. Long before the spoils system first appeared on this side of the Atlantic it was the custom in Great Britain to look upon appointments to well-paid public offices as the legitimate rewards of partisan service. The spoils of victory were distributed among the personal and political friends of the ministers in Walpole's day, or even earlier. At the middle of the nineteenth century, members of the House of Lords were so successful in getting their impecunious relatives on the public payroll that John Bright once referred to the civil service as "the outdoor relief department of the British aristocracy."

Its early vogue in England.

Members of parliament who supported the ministers were allowed to recommend officials in their own constituencies and these "placemen" sometimes bulked so large among the voters of the decayed boroughs that they virtually controlled the elections.¹ Appointments were for no definite term, hence removals could be made at any time. So Andrew Jackson and his friends did not invent the spoils system; they merely transplanted an old-world in-

¹ In one borough, where a count was made, it was found that one hundred and twenty-five out of five hundred voters had obtained appointments through the influence of a single member.

stitution to a new soil. But unlike most transplantations, this one took root and grew luxuriantly in the new environment. It became the most noxious weed in the garden of American politics.

Great Britain reformed her House of Commons in 1832 but left the civil service unreformed. Patronage continued to dominate appointments in all branches of the government. In England, however, there was no persistent clamor for rotation in office (such as arose in the United States), hence there were thousands of subordinate officials who, having got themselves on the public payroll, remained there to the end of their days. Many of them were indolent, unambitious, and incompetent but their salaries were not high enough to attract the cupidity of men who could not get or hold positions in private employ. The heads of departments complained that this combination of patronage in the higher ranks of the service and indolence in the lower ranks was making good administration impossible. Protests from the public also began to rain in upon parliament and something had to be done.

And its evil effects there.

Accordingly civil service competitions were established in England more than twenty-five years before they were inaugurated in the United States by the Pendleton Act of 1883. This first British Civil Service Act did not go very far, however, and there were numerous flaws in it. The examinations, for example, were to be in accordance with the wishes of the department concerned, and these were often expressed in a narrow way. But step by step the law was improved, and the powers of the civil service commission increased, until eventually the principle of fair and open competition was extended to virtually all the non-political positions in the national service.

The first British Civil Service Act (1855).

To-day all the permanent officials and employees in the public offices of Great Britain, with a few exceptions, are chosen under civil service rules. The exceptions include those officials whose work is of highly specialized or confidential nature, such as the permanent undersecretaries, the assistant secretaries, the chiefs of bureaus or branches, and the principal clerks, as they are called. These officials are not selected by competitive examination but in nearly all cases are secured by promoting men from lower positions in the department concerned. Exceptions are also made in the case of employees whose work is of an entirely routine character, requiring no particular qualifications, such as porters and janitors. The examinations for all other positions, about 185,000

The present system.

in all, are conducted under the auspices of a civil service commission composed of three members who are appointed by the crown.

Graduations
in the
service.

The whole civil service, irrespective of departments, is divided into grades or classes and a separate examination is provided for each. A candidate does not apply, for example, to be appointed to a clerkship in the foreign office, or in the ministry of health. He takes the general examination prescribed for all the higher clerks, and if he stands highest in the results he gets first choice as to the service which he will enter. It will be noted, accordingly, that the civil service examinations in Great Britain, unlike those commonly held in the United States, have no relation to the particular branch of administration which the applicant hopes to enter. They are distinctly academic in character and cover a wide range of university subjects (languages, history, mathematics, natural science, philosophy, political science, and so on) from which the applicant is permitted to elect a certain number.

Character
of the ex-
aminations.

The standards are high and the competition for the higher posts is very keen, so much so that in the case of these civil service positions it is virtually impossible for anyone not a high-ranking university graduate to secure a place near the top of the list. These examinations are probably the stiffest that exist in any country. In the case of the lower grades the examinations are not so difficult and may be passed with credit by those who have had a good secondary school education.¹ But they are severely selective because of the keen competition. This competition does not seem to be lessened by the fact that an age limit is imposed on all candidates. This differs in the various grades, but it is fixed in such way that young men and women, in order to enter the service, must take the examinations immediately after graduating from school or university. In the case of university graduates the age limit is twenty-four. Thus there is no provision in Great Britain (as in the United States) for admitting to the civil service examinations middle-aged men and women who have failed to make headway in private vocations.² The British civil service is a career which one must enter, if at all, at an early age. This limitation facilitates the system of promotions and eliminates most of the pressure

¹ Some specimen examination papers may be found in Robert Moses, *The Civil Service of Great Britain* (New York, 1914), pp. 290-311.

² In the federal service of the United States more than half the appointments are of persons over twenty-four years of age.

which would otherwise come from politicians for the appointment of their needy friends.

Writers on the science of government have rightly emphasized the important difference between the English and American methods of examining candidates for classified positions. In the United States every civil service test is adapted to the particular position that is to be filled. The tests for clerks in the postal service, for example, are quite different from those given to applicants for clerical positions in the state department. It is not general education but special qualifications that the civil service authorities in the United States seek to ascertain. And if the appointee is to spend his entire life in a single position, doing a particular form of work, there is much to be said for the American plan. But if his initial appointment is regarded merely as a starting-point from which he expects to rise by promotion into different fields, there is much less to be said for it. Indeed, the outstanding defect of the American plan is that it draws into the public service a horde of mediocrities who can pass a routine test for a subordinate position but who lack the general capacity to rise. They go in as bookkeepers or accountants or draftsmen or typists, and do a passable job in such vocations; but when it comes to picking a bureau chief or assistant secretary of the department from a whole roomful of them, there is frequently not one whose general education and versatility qualifies him to be considered for the higher post.

Public opinion in America, so far as it relates to civil service examinations, is strongly inclined to emphasize the specific, the concrete, the "practical." Americans have a belief that the test should be adapted to the job. It would be hard to convince the average congressman that strictly academic tests, such as we use for graduation in colleges and universities, would be the right thing for admission to the public service. Make such a proposal to him and he will think poorly of your intelligence. Yet it has been demonstrated, over and over again, in all branches of the public service, that men who have been highly and broadly educated do better and rise more rapidly than those whose competence extends to a single line of work. The American system, to sum it up, does not articulate itself with the system of education in schools and colleges but prefers to accept general mediocrity for the sake of the special qualifications, while the English system, by recruiting di-

A fundamental difference between the English and the American conceptions of a civil service examination.

The American emphasis on the "practical."

rectly from the regular educational institutions, disregards special training and goes out for general intellectual attainment.

How Englishmen look at the problem.

A cogent defense of the English point of view was set forth in an official report some years ago. "We regard the existing scheme," it said, "as designed to test the results of university education in general, and not the results of a special education preparatory to the public service. It would no doubt be possible to construct a scheme of examination comprising only subjects directly useful in the home civil service, another such for the Indian civil service, another for the foreign office, and so forth. But we are agreed that the examinations should be a test of general rather than specialized ability and education, and that it should be a matter of selecting under the existing scheme of national education those candidates who have used the best talents to the best advantage under that scheme. We consider that the best qualification for a civil servant is a good natural capacity trained by a rational and consistent education from childhood to maturity. We consider that the first requisite for a successful competition is a good field of candidates and that such a field can best be obtained by adapting our scheme to the chief varieties of university education, so that candidates while working for university honors will be at the same time preparing themselves to join in the competition if, when the time comes, they are attracted to it. We do not wish candidates to adapt their education to the examination; on the contrary the examination should be adapted to the chief forms of general education. We consider it highly important that candidates who enter this competition, and are successful, should be at least as well qualified for other non-technical professions as if they had never thought of it." ¹

There are other differences between the British and the American systems. In the United States, for example, it is customary to require in some cases that positions shall be distributed geographically so that residents of a few states shall not get all of them. In England there are no restrictions as to residence. But in England no one but a natural-born British subject can take the examinations, whereas naturalized American citizens are eligible in the United States. Both countries have provision for giving certain preferences to veterans, and in England the age limit has been waived for them in certain cases.

¹ *Report of the Committee on Civil Service (1917).*

Once appointed to the civil service in Great Britain an official holds office during good behavior, or until he reaches the age of sixty, when he may retire on a pension.¹ There is no danger that he will be removed when a ministry changes. It is an essential of good behavior, however, that he shall abstain from all active participation in politics. He is free to vote but not to serve on an election committee or to canvass for votes. He is forbidden to address political gatherings or otherwise to make an open display of partisanship. But members of the civil service are permitted and even encouraged to join a national association of public employees and they are provided with a regularly and officially-recognized channel for the presentation of their grievances.²

The permanence of tenure in England.

Promotions in the British civil service are made on the basis of seniority, service records, and the appraisal of general ability. In the lower grades there are promotional examinations to test this ability; in the higher grades the appraisal is made by the department head. In the larger departments there are promotional boards which prepare the ratings and lists. These are submitted to the department head who makes his recommendations from them. But before they are put into effect these recommendations for promotion must be certified by the civil service commission and approved by the officials of the treasury department. In this way virtually all favoritism in promotions has been eliminated.

Promotions.

Now the following question will, no doubt, suggest itself to American readers: What is there to prevent an incoming English ministry from abolishing a large number of positions, thus throwing members of the civil service out of office, and creating new positions exempted from the examinations, for the benefit of the new ministry's own political friends? There are no constitutional barriers to such an action. No court would have authority to reinstate the dismissed officials. But the tradition of permanence has now become so firmly entrenched that no new ministry would dare assail it. Every intelligent Englishman is aware that the continuity of administrative work would be utterly impossible under a system of ministerial responsibility if the non-political staff went in and out with every change of ministry. In the United States the

Why stability in the British civil service is essential.

¹ At the option of the official this age limit can usually be extended to sixty-five.

² By means of departmental councils and a national council. For an explanation see Herman Finer, *The British Civil Service* (London, 1927), pp. 77 ff., also the pamphlet by Morris B. Lambie, included in the bibliography at the end of this chapter.

spoils system was able to rise and flourish for a long time because every national administration is bound to stay in office for at least four years.

It results
from minis-
terial re-
sponsibility.

But in England a ministry has no minimum tenure. It may take office to-day and find itself overturned within a few months. Obviously it would never do to make the continuity of administration subject to interruption at any time. And no sensible man would accept a subordinate post in the government service if he knew that he might be ousted within a week, a month, or a year. Permanence of tenure on the part of the administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility. The same permanence, as will be seen later, has been established in France because changes of ministry are even more frequent there than in Great Britain. If a parliament desires complete freedom to turn a cabinet out of power at any moment, it must make some provision whereby the routine work of administration will be carried on without frequent shocks of interruption.

Reliance on
experts in
England
and in
America.

The association between a political staff which may change at any moment and an administrative staff which does not change—this association has some important consequences. It provides parliament, through the ministers, with expert counsel on every question that comes up. We often hear it said that the Congress of the United States should give greater heed to the opinions of the technical experts in Washington; that in enacting a tariff law, for example, it should defer to the advice of the tariff board, that in railroad legislation it should be guided by the technical skill of the interstate commerce commission, and that in dealing with the farm relief problem it should seek guidance from the experts in the department of agriculture. This may be quite true, but the practical difficulty lies in the absence of any provision for close contact between the leaders in Congress and these men who have the specialized knowledge. In the absence of the principle of cabinet responsibility they are kept at arm's length apart. The situation is unfortunate from both angles, because the civil service official who is not a member of the legislature sees only one aspect of his problem; the same is true of the legislator who has had no experience in administration. Seeing the problem from different angles they often disagree and since Congress has the ultimate power its view prevails. And indeed it is essential that the ulti-

mate decision on any question of public policy shall rest with the legislative body. But it is equally essential to the successful working of democratic government that public policies shall not be decided without consulting the men who know most about such things and whose function it will be to carry out such policies after they have been determined.

In England the men who execute the laws and carry out the policies of the government have a substantial share in the making of both. In fact there has been some complaint that they have too much share. Public bills, introduced into parliament by the ministers, are put into form by the permanent officials of their departments. The provisions of such measures are largely the result of departmental experience. It is true, of course, that the ministers assume responsibility for these bills and take the onus of explaining and defending them in parliament. For it is an unwritten rule in parliamentary debates that no mention shall be made of the permanent officials either by way of praise or of criticism, even though it be known to everybody that they, not the ministers, have put the measure into form. So far as parliament is concerned these subordinate officials are nonexistent. No minister ever takes shelter behind the staff of his department.

Parliament, according to one of its critics, is a tool in the hands of the minister, and the minister is a tool in the hands of the permanent officials.¹ This is a rather exaggerated way of putting it. But even an exaggeration may perform a useful service by sharply calling attention to a distinctive feature—as this one does,—which is, that laymen in British government have all the leadership while experts have most of the power. So long as the government of Great Britain is conducted by men and not by supermen this will inevitably be the case. The work of such departments as the foreign office, the home office, the colonial office, the treasury, not to speak of the versatile ministry of health, involves an enormous amount of detail. These details must be turned over to subordinates, and reliance must be placed upon them. But details lead to precedents, and precedents crystallize into a general policy. It is in this sense that the permanent officials, although not supposed to have any share in directing the affairs of state, do in fact have a very important share.

In England there are no "checks and balances."

Is the minister controlled by his subordinates?

¹ Harold J. Laski, in *The Development of the Civil Service* (London, 1922), p. 22.

Parliamentary "questions" and their relation to this matter.

It is sometimes said that the dependence of the ministers upon their permanent subordinates is accentuated by the practice of asking questions on the floor of parliament. As will presently be explained, it is the privilege of any member to put questions on the orders of the day in the House of Commons and to have them answered by the ministers during the hour allotted for this purpose.¹ Now the data for answering these questions, and even the answers themselves, are prepared by his office and handed to the minister in neatly-typewritten form. Necessarily so, for if a minister were personally to prepare all the answers which he is required to read in the House he would have time for nothing else. So he takes what is given to him. Moreover, when he has a speech to make, his civil service coadjutors round up the facts and the arguments for him—sometimes even write the speech itself. In this way it is said, he becomes the mouthpiece of his official subordinates.

Here, again, it is easy to exaggerate. The British minister, when he appears on the floor of the House to answer questions or make a speech, is a good deal more than a sluiceway through which the brains of his subordinates are permitted to get regular exercise. At any rate most ministers are. The sheets which he holds in his hand may have been prepared for him, but the ideas are usually his own, or at least they are colored with his own convictions. And when a vigorous personality—like Philip Snowden, Lord Birkenhead, Winston Churchill, or Lloyd George—takes hold of a department, one can be certain that secretaries and undersecretaries are providing them with neither the substance nor the style of their parliamentary deliverances. Nevertheless the dominant fact remains that the influence of the permanent civil service on the government of Britain is continuous, effective, and one of its most significant features.

The best general work on this subject is Robert Moses, *The Civil Service of Great Britain* (New York, 1914). A much earlier work by Dorman B. Eaton, bearing the same title (New York, 1880), contains some useful material on the early history of civil service reform. A volume of lectures describing various aspects of the system as they exist at the present time was published a few years ago under the title, *The Development of the Civil Service* (London, 1922). Mention should also be made of Herman Finer,

¹ See below, pp. 172-174.

The British Civil Service (London, 1927) and W. A. Robson, *From Patronage to Proficiency in the Public Service* (London, 1922), both of which are Fabian Society publications. E. C. Shepherd, *The Fixing of Wages in Government Employment* (London, 1923) deals with one important phase of civil service administration. A small book by F. G. Heath on *The British Civil Service* (White Plains, N. Y., 1917) is general in scope and not of great value. The best concise account of the system, its history and present workings, is that given in F. A. Ogg's *English Government and Politics* (New York, 1929), chaps. x-xii. There is also a good survey in Sir John A. R. Marriott's *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. II, chap. xxvii.

There is a lucid account of British Civil Service Personnel Administration in a pamphlet bearing that title, by Morris B. Lambie, which was reprinted from House Document No. 602, 70th Congress, 2d Session, and issued by the Government Printing Office in 1929. Some interesting and readable material will be found in Sir William Beveridge, *The Public Service in War and Peace* (London, 1920). Ramsay Muir's volume on *How Britain is Governed* (New York, 1929) contains a trenchant criticism of the way in which the civil service has developed into a bureaucracy (pp. 37-80). The chapter on "Government by Amateurs" in Sir Sidney Low's *Governance of England* (pp. 199-217) is interesting and suggestive. Instructive articles on various phases of the civil service appear from time to time in the *Journal of Public Administration*.

Among public documents relating to the subject mention should be made of the *Fourth Report of the Royal Commission on Civil Service* (1914), portions of which are printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chap. iii; the *Report of the Committee Appointed by the Lords Commissioners of His Majesty's Treasury* (1917); the *Final Report of the Treasury Committee on Recruitment of the Civil Service* (1919); and the *Report of the Joint Committee on the Organization of the Civil Service* (1920).

CHAPTER VI

THE HOUSE OF LORDS

The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.—*John Stuart Mill.*

And while the House of Peers withholds
Its legislative hand,
The noble statesmen do not itch
To interfere with matters which
They cannot understand.

—Gilbert and Sullivan's *Iolanthe*.

The oldest
lawmaking
body in the
world.

The British parliament consists of two chambers, known as the House of Lords and the House of Commons. The House of Lords is commonly spoken of as "the second chamber"; but historically it is the first, being the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption, for more than ten centuries. In a previous chapter something was said about the origin and early history of the Lords; it grew out of the great council which, in a way, was the successor of the Saxon Witan. The members of this Magnum Concilium were the magnates of the realm, the great landowners, bishops, and barons. The king on his throne presided over them. There was a time when they had all the powers of parliament on the principle that "those who owned the land should rule it." But civil liberty fought its way down the centuries and they gradually lost most of their legislative strength. Even at the height of its power the House of Lords was not a very active or aggressive body. During the great Napoleonic wars, according to Gilbert and Sullivan, it "did nothing in particular and did it very well." That is a sure way for a legislative body to lose authority.

To understand the composition of the House of Lords it is necessary to know something about the peerage, what it is and what it is not. On this subject of peers and peerages the average American has rather cloudy notions. He is aware that there is a

certain element in the British population known as the nobility, the members of which sometimes marry American heiresses, and he has observed that they have a variety of titles—duke, earl, marquis, viscount, baron, and so forth. But what these ranks imply, or which has precedence over the other he usually does not know, nor does he very much care. In the minds of most Americans the peerage is not an institution but an anachronism.

Yet the student of English government cannot so lightly brush aside those princes and lords who “are but the breath of kings,” for both the peerage and the House of Lords have woven themselves deeply into the British political system. The peerage constitutes the top stratum in British society; were it to disappear the social hierarchy of the United Kingdom would have to be recast. The House of Lords is an integral part of the British political and judicial systems; its composition and powers must be understood by anyone who desires to know how the laws are made and appeals decided. Thomas Carlyle once said of the Corn Laws that they were too absurd to have a chapter, so he omitted them. But he did not thereby contribute much to the enlightenment of his readers on matters of fiscal policy. We would think poorly of an Englishman were he to write a treatise on American government with no mention of Tammany Hall, the spoils system, the eighteenth amendment, the farm bloc, and the gerrymander, merely because he regarded these things with a personal aversion. Political institutions ought to be studied objectively. Their importance is not diminished by ignoring them.

Its importance.

The term peers originally meant equals, but the British peerage is a body which contains men and women of widely different ranks. It is sometimes said that the princes of the royal family constitute the first and highest gradation in the peerage, but this is not strictly true. The princes, as such, are not members of the peerage at all. But the Prince of Wales is Duke of Cornwall by birth, and this dukedom is the only example of a peerage which can shift to someone other than its holder during the latter's lifetime. The king's second son, was created Duke of York some years ago and as such is a member of the peerage. It is as dukes, therefore, and not as princes that these members of the royal family belong to the peerage of the United Kingdom. As peers of the blood royal, however, they outrank all other peers. So, in reality, there are only five regular gradations

Ranks in the peerage.

in the British nobility—dukes, marquises, earls, viscounts, and barons.

Dukes, marquises, earls, viscounts, and barons.

The rank of duke made its first appearance in 1337 when the Black Prince became Duke of Cornwall. Dukedoms have always been given sparingly, and to-day there are only twenty dukes in the entire peerage. It is the highest rank that can be conferred upon any one outside the royal family. Next come the marquises, of whom there are twenty-eight, the earls who number about one hundred and thirty, the viscounts who form a relatively small element (about seventy), and the barons who are the most numerous element, over four hundred in all.¹ These figures, by the way, do not include members of the Scottish and Irish peerages.

All are hereditary.

All ranks in the peerage (with the exception of the law lords and the ecclesiastical peers) are hereditary. The eldest son of a peer becomes a peer on his father's death; until then he is a commoner, an ordinary citizen, with no special privileges. The younger sons and daughters also pass into the ranks of ordinary citizenship although in many cases they bear courtesy titles.² Most of those who constitute the peerage have inherited their rank, but new peers are often created by the crown.

The British peerage is not a caste.

Special emphasis should be given to the point that there is only one peer for each peerage. Save for the one who holds the title all

¹ The rank of earl goes back to Saxon times, and that of baron to the Norman period. The rank of marquis dates from 1385, and that of viscount from 1442. No new ranks in the peerage have been created, therefore, for nearly 500 years.

² These "courtesy" titles add to the outsider's confusion. He reads about the doings of Lord John Russell, Lord Hugh Cecil, and others in the House of Commons and wonders why men with such titles are sitting in the lower House. It means that these statesmen are younger sons, commoners, with courtesy titles. But what are courtesy titles? The matter may be explained in this way: The eldest son of a duke, a marquis, or an earl (but not of a viscount or baron) usually makes use of one of his father's subsidiary titles as a courtesy title during his father's lifetime. Nearly every peer in the higher ranks of the peerage has one or more subsidiary titles,—some have nearly a dozen of them. They usually indicate the gradual progress of themselves or their ancestors from the lower to the upper ranks of the peerage. Thus the Duke of Devonshire is also Marquis of Hartington, Earl of Burlington, and Baron Cavendish. His eldest son, accordingly, is by courtesy known as Lord Hartington, but during his father's lifetime he is not a member of the peerage and does not have a seat in the House of Lords. All younger sons of peers are entitled to the prefix "Honorable," and by a well-recognized social usage the younger sons of dukes and marquises are known as "Lord John So-and-So," or "Lord George So-and-So," as the case may be. The same general rules as to courtesy titles apply to the daughters of peers, except that for some mysterious reason the daughters of an earl are known as "Lady Mary So-and-So" or "Lady Gwendolen So-and-So" whereas their brothers have only the prefix "Hon." Perhaps the most familiar courtesy title of the past generation was that borne by Gladstone's colleague, the Marquis of Hartington.

other members of the family are commoners.¹ And save for the one who inherits the title all of them remain commoners. Thus the great majority of those who are born the sons and daughters of peers pass into the ranks of common folk and are assimilated there. This, above all things else, has differentiated the British peerage from continental European institutions of the same general type. In France, before the Revolution, all the children of a nobleman became and remained members of the noblesse. As a result the French nobility became a very large body, with a consequent cheapening of its prestige. Likewise it became a caste, a privileged order, with no overflow into the ranks of the people. In England, on the other hand, the peerage has never been a close corporation. Men who are born commoners become peers; men who are born sons of peers become commoners. This fluidity is its greatest source of strength. Any British subject can become a peer by reason of his own merits, if he possesses them. To that extent the peerage is a democratic institution.

Not all members of the peerage are Lords of Parliament, but only peers of certain designated categories. On the other hand some members who are not hereditary peers have been given seats. Before the union of England and Scotland in 1707 all English peers of whatever rank sat in the House of Lords, and all Scottish peers sat in the Scottish upper House. By the terms of the union it was provided, however, that while all English peers should continue to have seats at Westminster the peerage of Scotland should be represented by sixteen members only. These sixteen are elected for each parliament by the whole body of Scottish peers, which now numbers less than fifty in all.² Eventually the old Scottish peerage will become absorbed, for no additions have been made to it since the union of 1707. The same is true of the old peerage of England. Nearly all additions during this period of more than two hundred years have been to the peerage of Great Britain which was established at the time of the Anglo-Scottish union.

The Irish peerage at the time of Ireland's union with Great Britain (1800) included 234 members. To have given all these Irish peers the right to sit in the House of Lords was not practicable, so it was provided by the Act of Union that the whole body of

Branches of
the peerage:

1. The peerage of England.

2. Of Scotland.

3. Of Great Britain

4. The peerage of Ireland.

¹ The wife of a peer, however, would not be called a commoner.

² Some of the Scottish peers, however, have titles in the English peerage or in the peerage of Great Britain as well. Thus the Duke of Buccleuch sits in the House of Lords as Earl of Lancaster.

Irish peers should select twenty-eight of their members to represent them at Westminster. This selection is not made, as in Scotland, for the duration of a single parliament but for life. The only occasion on which the Irish peers meet to elect a representative is, therefore, when one of the twenty-eight dies or becomes disqualified. It was also provided in the Act of Union that the total membership of the Irish peerage should gradually be reduced to one hundred members, and by 1921 this had been accomplished. The statute which established the Irish Free State made no change in the status of the Irish peerage or its representation in the House of Lords; but vacancies in the quota of Irish peers have not been filled since 1922 and it is assumed that none will be filled hereafter. Thus the representation of the Irish peerage in the House of Lords will gradually pass out.

Present
composition
of the
House of
Lords.

The "spir-
itual peers."

The law
lords.

At the present time the House of Lords contains about seven hundred members, of whom more than six hundred are peers of Great Britain, while sixteen are representative peers of Scotland, and twenty-eight are representative peers of Ireland. But the House is not composed of hereditary peers alone. Its membership includes, in addition, twenty-six "lords spiritual," namely, the two archbishops of the Established Church (Canterbury and York), together with twenty-four bishops. Among these the bishops of London, Durham, and Winchester are always included; the other twenty-one seats are allotted among the remaining bishops in order of seniority, that is, in the order of their appointment to office. When a bishop retires from his ecclesiastical office he loses his right to a seat in the House.

By statute it has also been provided that six "lords of appeal" shall be appointed peers for life and have seats in the House of Lords. These lords of appeal are chosen from among the distinguished jurists of the British empire, and unlike other members of the House of Lords are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court of appeal from the lower courts of England, Wales, Scotland, and Northern Ireland. And since a body of seven hundred members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training. The functions of the House of Lords as a court are therefore performed by the

"law lords" of the chamber who include not only the six lords of appeal but the lord chancellor, former lord chancellors, and any other lord of parliament who holds or has held a high judicial office. But these law lords do not form a committee; their sessions are, officially, sessions of the whole House. In theory any member of the House of Lords is entitled to attend the sessions and to take part in the hearing of appeals; but of course the lay members never do.

Peers of any rank may be created by the crown at any time and without any limit as to number. In other words, the creation of new peers is a matter which the crown asks the advice of the prime minister. Members of the cabinet do, and do, present names for their premier's consideration. But no others outside the cabinet circle. On rare occasions the king has offered a peerage to a retiring prime minister before asking the advice of a new one. Some additions to the peerage are made almost every year. During the long reign of Queen Victoria no fewer than 373 were created, an average of about six per year. Since her death the annual average has been somewhat higher. On the other hand, some peerages are extinguished from time to time by the death of peers who leave no eligible male heirs. It is not necessary that there shall be sons to inherit the title; in most cases the peerage will pass, in default of sons or grandsons, to brothers or even to cousins.

How new
peers are
created.

In some instances women have inherited rank in the peerage and a few women have been made peers in their own right. But none of them have yet been permitted to sit in the House of Lords. In 1926 a bill was introduced to give them this privilege but the Lords ungallantly defeated it. The rules of succession to any title of nobility depend upon the stipulations contained in the original royal patent which created the peerage. The crown may fix these rules at its discretion, provided, however, that there must be no departure beyond the scope of the general laws relating to the inheritance of real estate; in other words the succession must follow some method of descent already recognized at law.

Women
peers not in
the house.

A peerage cannot be resigned or relinquished. The heir must accept his title no matter how much he may be disinclined. If, however, he is under twenty-one years of age when he inherits the title he does not take his seat in the House of Lords till he attains

No resig-
nations.

his legal majority. In 1919 Viscount Astor tried to get rid of the peerage which descended to him on his father's death because he wanted to continue his membership in the House of Commons and could not sit in both chambers; but he found that this could not be done except by a special act which parliament refused to pass. And of course a peerage is not transferable, like property, by sale or gift. A peerage by grant (that is, an offer of a new peerage) can be declined, but not a peerage by inheritance. Occasionally some cousin or nephew of a peer, having lived for a long time in America, suddenly finds himself the heir to a title. He can evade the designation only by keeping clear of British soil.

The granting of peerages is in part determined by custom, but to a larger extent it depends upon the temper of the cabinet, with the prime minister exercising a controlling voice in the matter. Custom dictates, for example, that a prime minister, or a speaker of the House of Commons, on retirement from office, shall be offered a peerage. The same applies to ministers who have rendered distinguished public service over a considerable term of years. Thus William Pitt, the elder, became Lord Chatham; Benjamin Disraeli went to the House of Lords as Earl of Beaconsfield; Arthur J. Balfour a few years ago was raised to the peerage as Earl Balfour, and Herbert H. Asquith became Earl of Oxford and Asquith. Distinction in fields other than statesmanship also calls for the bestowal of this honor—in the military and naval service, for example. Every student of English history will recall numerous examples such as the Duke of Marlborough, the Duke of Wellington, Lord Nelson, the Earl of Camperdown, Lord Wolseley, Lord Kitchener, Earl Haig, Earl Beatty, Viscount Jellicoe, and many others. Notable contributions to literature, art, or science are frequently recognized in the same way, as illustrated by the examples of Lord Tennyson, Lord Kelvin, Lord Lister, Lord Avebury, Lord Bryce, and Lord Passfield (formerly Sidney Webb). And there are not a few who have crept into the ranks of the peerage by reason of large wealth, judiciously used. Munificent gifts to hospitals, educational institutions and philanthropic enterprises, contributions to the party campaign funds, and other forms of largesse have helped to further the ambitions of prospective peers. Not in so many cases, however, as to give much warrant for Defoe's sour assertion that:

Wealth, howsoever got, in England makes
 Lords of mechanics, gentlemen of rakes.
 Antiquity and birth are needless here:
 'Tis impudence and money makes a peer.

New peerages are usually granted on certain anniversary occasions, the king's birthday or New Year's Day. The lists, when officially announced, occasionally contain some rude surprises. As a rule the honors are worthily bestowed and the action of the cabinet is generally approved by public opinion, although it sometimes happens that an individual name comes in for newspaper criticism. Some years ago it was predicted that when a Labor cabinet came into office there would be an end to the creating of new peerages. But this proved to be a false prediction. Peers have been made with the Labor party in office, although not so plentifully.¹

The public
attitude.

Public criticism has been outspoken during the past dozen years in connection with certain elevations to the peerage. In one case a proposed creation was roundly criticised in the House of Lords itself, and the peer-designate is said to have requested that the patent be not issued in this case. At any rate it was not issued. In deference to the general criticism a royal commission was appointed in 1922 to inquire into the whole matter of bestowing these honors and especially into the rumors that certain honors could be bought by any reputable citizen who was willing to pay the price in cash. The investigations of this commission disclosed nothing very reprehensible, but parliament in 1925 established a safeguard by making it a misdemeanor "to give or offer, take or ask" any gift or sum as an inducement to procure the grant of a title.

Some hostile
criticism
and its re-
sults.

Knights and baronets are not members of the peerage, although the rank of baronet is hereditary. Knighthoods are bestowed for life only. They are of several categories, such as Knight of the Order of St. Michael and St. George (K.C.M.G.), or Knight Commander of the Order of the Bath (K.C.B.). A knight uses his given name and surname, with the prefix "Sir," as for example, Sir Thomas Lipton. A baronet does the same, with the abbreviation Bart. after his name.

Knights
and bar-
onets.

Men who are already baronets or knights are sometimes promoted to the peerage, but this is not the usual course. As a rule

¹ Five or six of them in four years.

those who are made peers have had no previous title of honor although they frequently have been members of the House of Commons or have held other public offices. In the great majority of cases a commoner who becomes a peer must be satisfied with the lowest grade, that is, with the rank of baron, but occasionally a distinguished commoner is made a viscount, or even an earl, in his initial patent of nobility.

Choosing a
title.

The recipient of a peerage is permitted, with certain limitations, to choose his new appellation. Very often he takes it from some place with which he has been connected by some bond of established residence or with which he has had some political connection. Thus Sir F. E. Smith, when he became an earl, chose the title Lord Birkenhead because he had been member of the House of Commons for Birkenhead. For the same reason Sir Rufus Isaacs became Lord Reading when he went to the House of Lords. Some retain their family patronymics, as Mr. A. J. Balfour did when he became Earl Balfour. Mr. Asquith, in 1925, managed to combine the name of an ancient city with his own by becoming the Earl of Oxford and Asquith. Provided the title has not been already assumed by some other peer, and provided also that by custom no peer below the rank of earl may take for his title the name of a county or county town, he has a free choice. The new peer's wife usually helps him decide the matter, it is said, and properly so, for the wife of a peer like the wife of a commoner is saddled with her husband's name. Here is an opportunity to do something that satisfies both halves of the household. A peerage, of course, does not come out of the clear sky, and the future title has usually been discussed and settled in conjugal conclave before it arrives.¹

Gladstone
and Dis-
raeli.

The grant of a new peerage, as has been said, may be declined, although peerages by inheritance may not, and declinations have sometimes taken place. Gladstone afforded a conspicuous example. On more than one occasion he was pressed to leave the Commons for the Lords but steadfastly refused, even after he retired from

¹ Tastes differ as widely in names as in attire. Disraeli, as has been said, chose to be known as Earl of Beaconsfield; Sir Donald Smith became Lord Strathcona; Sir Max Aiken chose the title of Baron Beaverbrook. Ignatius O'Brien, in 1918, decided that Baron Shandon would suit his taste; a little earlier Sir Michael Hicks-Beach became Viscount St. Aldwyn. Kitchener, Haig, and Beatty deemed their old names good enough. When a new title is selected the old family patronymic is retained for the use of the daughters and younger sons. The family name of the Bedfords is Russell; that of the Salisburys is Cecil; that of the Aberdeens is Gordon; that of the Norfolks is Howard, and that of the Devonshires is Cavendish.

public life. But his great antagonist, Disraeli, accepted a peerage because his health prevented him from continuing to bear the strain of leadership in the House of Commons. Rank in the peerage carries no salary from the public treasury, and members of the House of Lords receive no remuneration for their services. But most peers are well-to-do and many of them figure prominently among the landowners and captains of industry in England. To maintain the dignity and manner of living customary among members of the peerage requires a considerable income, for even a baron ought to maintain two establishments, one in London and another in the country.

(Members of the House of Lords have various privileges and are under certain disabilities. Freedom of speech and freedom from arrest while the House is in session extends to the lords as well as to the members of the lower chamber. In addition it is a rule of law, dating back to the Great Charter of 1215, that a peer has a right to be tried by his fellow peers and hence is not amenable to the ordinary courts. If, therefore, a member of the House of Lords insists on his personal privilege when charged with treason or felony, he must be tried by his fellow members. In the opinion of eminent lawyers this right is one which cannot be waived. (In the case of misdemeanors, however, a peer may be tried in the ordinary courts. It is only in very rare instances that the House of Lords is called upon to try one of its own members for treason or felony; the last occasion was about a quarter of a century ago.¹

Privileges of
peers.

Members of the peerage have no votes at parliamentary elections. Nor, with one exception, are they eligible as candidates for the House of Commons. The exception extends to all Irish peers who are not among the Irish representatives in the House of Lords. Any such Irish peer may be elected from an English (but not from a Northern Ireland) constituency. The disqualification from candidacy does not extend in any case to the members of a

Peers do not
vote at par-
liamentary
elections.

¹The case of Earl Russell, charged with bigamy (a felony) in 1901. It may be added, by the way, that the distinction in English law between felonies and misdemeanors is a highly illogical one. Misdemeanors are, in some cases, graver crimes than felonies. A curious point may be noted here: If at the time of a trial the House of Lords is in session, the trial takes place before the whole House, presided over by the lord chancellor who is appointed lord high steward for the purpose; if the House is not in session the trial is before the court of the lord high steward, which consists of a limited number of selected peers. In the first case the whole House sits in judgment, deciding questions of law and fact alike; in the second case the selected peers are only judges of fact, questions of law being decided by the lord high steward (lord chancellor) as presiding judge.

peer's family, but only to the holder of the title. Even the eldest son of a peer, the heir-apparent to the title, may be elected to the House of Commons during his father's lifetime. But on succeeding to the title he must vacate his seat in the lower chamber. Sons of peers have figured prominently in the Commons on many notable occasions and in some cases have been its leaders.

The House
of Lords in
session.

Its presid-
ing officer.

Its proce-
dure.

The House of Lords meets in its own chamber at Westminster. It is an impressive meeting-place, the most handsome legislative chamber in the world, richly upholstered and dowered with a soft light that filters through the magnificent stained-glass windows. There is an air of leisure and luxury about it. The sessions of the Lords are coincident with those of the Commons. When the Commons ends its session the upper chamber does likewise; but each House can adjourn separately. Sessions of the House of Lords are presided over by the lord chancellor who is appointed by the crown upon the advice of the cabinet. He sits on a large couch or divan known as the Woolsack¹ and puts motions, but he does not have any disciplinary powers.² He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides, if necessary, whom it will hear. This restriction of the presiding officer's power dates back to the time when the lord chancellor was not a peer but merely an officer of the king's household. Even yet, as has been said, there is no legal requirement that he shall be a member of the House, although he usually either is or is made one.

The House of Lords meets regularly on Tuesdays, Wednesdays, and Thursdays. Sessions are often held on Mondays also, and more rarely on Fridays. The sittings do not usually last more than an hour or two and as a rule they are slimly attended. Out of the seven hundred members not more than thirty or forty usually attend except when matters of some importance are to be discussed. It is said that more than two-thirds of the lords attend fewer than ten sittings a year. Three members constitute a quorum

¹ The term Woolsack originated in the reign of Elizabeth when a statute was passed prohibiting the exportation of wool from England. The judges in the House of Lords, in order to show their approval of the measure and to emphasize the desirability of creating a home market for English-grown wool, had their bench stuffed with it.

² "The Lord Chancellor . . . is not to adjourn the House, or do anything else as mouth of the House, without the consent of the Lords first had, except the ordinary thing about bills . . . wherein the Lords may likewise overrule. . . ." *Standing Orders*, xx.

to do business, but at least thirty must be present in order to pass any law. In the latter part of the session, however, when bills come up from the Commons the daily sittings last longer and are better attended. The proceedings are traditionally dull, although its "full-dress debates" now and then are of high quality; few questions are ever asked; there are no estimates of expenditures to be discussed; and the recommendations of committees are ordinarily accepted with little or no dissent.

On the other hand the rules of the House are so liberal that it is possible for any peer to initiate a debate, at almost any time and on any matter of public importance, by "moving for papers," that is, offering a resolution asking that certain official documents be laid before the House. In this way public attention may be drawn to any question and a full discussion may be had in the Lords at a time when the pressure of business in the Commons precludes a long debate there. During such discussions the standards of debate in the Lords are quite up to (or even above) those of the popular chamber, for the House of Peers contains no inconsiderable number of good speakers. And what is more, they are men who speak to the point. Speeches in the House of Lords are not made for the benefit of the press gallery. A peer has no constituents to humor or impress. He represents no one but himself. Politically the House of Lords is one-sided, the Conservatives being in an overwhelming majority. There is never any doubt as to the outcome of a vote when party lines are drawn; but on most questions the House does not divide that way.

Its rules and debates.

The House of Lords has three special powers which it does not share with the House of Commons. It is a court, as has been said, for the trial of its own members; but this function is now of little importance. In the second place the House of Lords is a supreme court of appeal for the hearing of certain civil and criminal cases, but its judicial work is performed by a very small proportion of its membership, as has been shown. Finally, the House of Lords is the body which hears and determines impeachments brought by the House of Commons. This is an ancient prerogative of the Lords; it goes back to the days of the Saxon Witan. Before the development of ministerial responsibility it was a function of great importance inasmuch as it afforded the only means of calling the king's advisers to account. It was through the power of impeachment that parliament managed to acquire its control over the

Special powers of the House of Lords.

Impeachments.

actions of the crown. During many centuries this power was freely used, but it has now dropped into abeyance. One can scarcely conceive of a situation, under the existing parliamentary system, in which it would be necessary to impeach any British official. A vote of the House of Commons requesting his removal from office would be enough, for no ministry could deny such a request and remain in office.¹ And if it should be necessary to penalize any public officer, otherwise than by removal from office, the ordinary courts afford an adequate process.

Legislative
functions:

Introduc-
tion of bills.

Aside from financial measures any public bill may be introduced in the House of Lords. Financial measures must originate in the Commons. As a matter of usage, however, very few legislative proposals except private bills (see pp. 188-192) ever get their first reading in the upper chamber. Nine-tenths of the public measures begin their journey in the Commons. The result is that during the early weeks of a session the Lords have almost nothing to do. Then, as the House of Commons gets into its stride, the bills come up in larger numbers and for a time the peers are amply provided with work. It has frequently been proposed that the cabinet should fairly apportion the introduction of government measures to both chambers, thus avoiding idleness at the beginning of a session and congestion at the end; but this suggestion has not found favor. There would be little advantage in setting the Lords to work on important measures until after the attitude of the lower chamber has been determined.

Rejection of
bills sent up
by the Com-
mons.

The old ar-
rangement.

Until 1911 it was technically the privilege of the Lords to reject any bill, even a money bill. But by non-use the upper House had lost its right to amend any financial measure, and in the opinion of many constitutional lawyers it had also lost, by non-use over a long term of years, its right to reject—although the Lords themselves had never conceded this loss. As to bills other than money bills there was never any question, prior to 1911, that the House of Lords might both amend and reject anything sent up by the Commons. The power of rejection was, in fact, used on many momentous occasions during the nineteenth century, notably in the defeat of the first reform bill (1831) and the second Irish home rule bill (1893). In such cases there was no way in which the Commons could make its will prevail against the opposition of the

¹ This, of course, would not include the judges, who are removable only on an address or resolution of both Houses.

Lords. To be sure there was one potential method of achieving this end, but it was so drastic as to preclude its use on any save the most critical occasions. The method involved the creation of enough new peers to swamp the opposition in the Lords.

Under ordinary conditions, when the House of Lords rejected a measure that had been passed by the Commons there was some grumbling in the Green Chamber but nothing happened. If the rejected bill was an important government measure, introduced by the ministers and passed under their guidance, the prime minister could advise a dissolution of parliament and a general election on the issue. This would put the matter before the high court of public opinion for judgment. Then, if the people upheld the ministry, the Lords were expected to give way, which they usually did.

How it worked.

It was not until 1909 that a deadlock between the Lords and Commons arose in such form and assumed such bitterness as to compel the making of a new provision. In the autumn of that year Mr. Lloyd George, then chancellor of the exchequer in the Liberal ministry, brought forward a finance bill or budget which proposed the levy of certain new taxes, more particularly some new taxes on land. As these taxes would bear heavily upon the owners of large estates and were also open to some serious practical objections, the House of Lords rejected the measure and also defeated various other bills which had been passed by a majority in the Commons. The lower House showed its resentment by adopting a resolution which declared the action of the Lords to be a breach of the constitution and a usurpation of the privileges of the House of Commons. But the Lords stood their ground and the prime minister decided to request an appeal to the voters. Accordingly a general election took place in the early days of 1910. During this campaign the Lloyd George finance bill and the question of "clipping the wings" of the Lords formed the chief issues. The Liberals were successful at the polls and having repassed the finance bill in the Commons, sent it for the second time to the upper chamber, whereupon the Lords accepted the verdict of the country and gave their assent to the measure.

The conflict over the Lloyd George budget.

But the Liberals were determined that the relations between the two chambers should be clarified in such way that it would no longer be necessary to hold a general election in order to make the Lords knuckle under. Accordingly a measure designed to limit

The Parliament Act of 1911.

the powers of the Lords was introduced by the ministers into the House of Commons. This bill contained four outstanding provisions. First, it stipulated that money measures, if passed by the House of Commons, should become law one month after such passage, even though the Lords should withhold their concurrence. Second, it gave a definition of money bills and made provision that in case of disagreement as to whether a bill came within the definition the decision of the speaker of the Commons should be conclusive.¹ Third, it provided that any other public bill passed by the House of Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, should become a law on receiving the assent of the crown notwithstanding the failure of the Lords to approve the measure.² Finally, it arranged that the maximum duration of a parliament should henceforth be five years instead of seven. It should be noted, however, that parliament can at any time extend its own lifetime beyond this five year term if an emergency so requires, and the very parliament which passed the Act of 1911 did this during the world war—prolonging its own existence for nearly eight years and thus giving a good example of parliamentary omnipotence.

Its acceptance by the Lords.

Under the title of the Parliament Bill, this measure for curbing the powers of the upper chamber was passed by the Commons and sent to the Lords. The latter, hardly daring to reject the bill without offering some constructive measure of reform in its place, adopted resolutions embodying an alternative scheme. The ministry thereupon served notice that another general election would be held unless the Lords accepted the bill and this threat was presently carried into effect. Once more the country stood by the Liberals and thus assured the enactment of the reform measure.

¹ The definition is as follows: "Any public bill which, in the judgment of the speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts or public money; the raising or guarantee of any loan or the payment thereof, or subordinate matters incidental to those subjects or any of them."

² It is stipulated that this provision shall not apply to any measure extending the duration of parliament beyond its present maximum of five years, or to certain other specified measures. The two year interval, to be exact, must elapse between the date of the first occasion on which the bill receives its second reading in the Commons and the date of its final passage for the third time. The House of Commons is authorized to direct in any bill, if it so desires, that the measure shall not become law unless and until it receives the assent of the Lords.

Not, however, without a renewed flicker of resistance from the upper chamber which had to be cowed into submission by a threat to create new peers,—as many as might be needed to pass the bill. In the end many of the opposition lords abstained from attendance and the measure passed by a rather narrow margin amid scenes of intense excitement. The Parliament Act of 1911 embodied the most important change that had been made in the constitution of Great Britain for more than three-quarters of a century.

Proposals to change not only the powers but the composition of the House of Lords have been made on many occasions, especially during the past half century. The British House of Lords is like the Supreme Court of the United States in that any unpopular action is promptly followed by a clamor for a change in its structure or authority. The rejection of various measures during the eighteen-nineties stirred up much popular antagonism among the Liberals, but when the Conservatives came forward with a proposal to decrease the hereditary element in the House of Lords by the introduction of life peerages the Liberals did not take kindly to the plan. Again, in 1908-1911, when the Lords were in collision with the Liberal ministry, various other projects of reform were broached. The most notable of these was the Lansdowne plan which contemplated a House of about 330 members, partly of peers and partly of laymen, chosen by a rather complicated process.¹ This was intended as an olive branch to the Liberals in the endeavor to halt the enactment of the Parliament Bill, but it was coldly rejected. Other proposals were put forward from various sources and in the end a parliamentary committee or conference under the chairmanship of Lord Bryce was appointed to study them all. It consisted of thirty members drawn in equal numbers from the House of Lords and the House of Commons, and representing all three political parties.

Proposals
for the reor-
ganization
of the upper
chamber.

The Lans-
downe plan.

This conference, in 1918, made a long report with some definite recommendations.² It recommended that the upper chamber be

The Bryce
plan.

¹ One hundred peers were to be chosen by the whole body of the peerage, one hundred persons were to be appointed by the crown either from the peerage or outside, one hundred and twenty persons were to be elected by members of the House of Commons sitting in regional groups. Five bishops were to be chosen by the whole body of bishops.

² The report is printed in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 576-601. A full discussion of its merits and defects may be found in H. B. Lees Smith, *Second Chambers in Theory and in Practice* (London, 1924), pp. 216-235.

reduced in size and that it be constituted of two elements, one-third of the members chosen from the peerage and two-thirds by the House of Commons voting according to regional groups. The term of members was to be twelve years with one-third of the membership chosen quadrennially. In case of disagreement between this second chamber and the House of Commons it was recommended that the matter be referred to a joint conference made up of thirty members from each chamber. This report met strong opposition, particularly against the proposal for settling disagreements by joint conference.

The proposed resolutions of 1922.

Instead of urging these recommendations, therefore, the cabinet appointed a committee of its own members to consider the question and in 1922 five resolutions were submitted to the House of Lords for discussion.¹ But the Lords displayed no enthusiasm for the ministry's plan and it also met with a rather frigid reception in the country at large. There was a feeling that it would be unwise to do any half-hearted reforming of the hereditary House, especially when such action involved an increase of its powers. At any rate the five resolutions were pigeonholed when the Lloyd George coalition ministry went out of office in 1922.

Subsidence of the movement for reform.

There the matter has rested during the past ten years. The Conservative ministry, while it was in power, promised to do something but did nothing. Two or three discussions of the question took

¹ The following were the resolutions:

1. That this House shall be composed, in addition to peers of the blood royal, lords spiritual, and law lords, of: (a) members elected, either directly or indirectly, from the outside; (b) hereditary peers elected by their order, and (c) members nominated by the crown, the numbers in each case to be determined by statute.

2. That, with the exception of peers of the blood royal and the law lords, every other member of the reconstituted and reduced House of Lords shall hold his seat for a term of years to be fixed by statute, but shall be eligible for re-election.

3. That the reconstituted House of Lords shall consist approximately of 350 members.

4. That while the House of Lords shall not amend or reject money bills, the decision as to whether the bill is or is not a money bill, or is partly a money bill and partly not a money bill, shall be referred to a joint standing committee of the two Houses, the decision of which shall be final. That this joint standing committee shall be appointed at the beginning of each new parliament, and shall be composed of seven members of each House of Parliament, in addition to the Speaker of the House of Commons who shall be ex officio chairman of the committee.

5. That the provisions of the Parliament Act, 1911, by which bills can be passed into law without the consent of the House of Lords during the course of a single parliament, shall not apply to any bill which alters or amends the constitution of the House of Lords as set out in these resolutions, or which in any way changes the powers of the House of Lords as laid down in the Parliament Act and modified by these resolutions.

place in the House of Commons, the last one in the autumn of 1928. They resulted in no action. The Labor ministry has not felt able to undertake a reorganization of the Lords for two reasons: first, because it does not control a majority in the House of Commons but is dependent on the Liberals for its own continuance in office, and, second, because the Labor party cannot agree within its own ranks on a plan of reform. The radical wing of the party wants the upper House abolished altogether, while the more moderate faction is not ready to go so far.

The composition of the House, accordingly, remains unchanged. It is not regarded as satisfactory even by the Lords themselves; on the other hand none of the proposed substitutes seems to promise a great improvement. It is probably true, as John Bright once said, that a hereditary House of Peers cannot endure forever in a free country, yet it will remain until something to take its place is devised and adopted. Englishmen, as a rule, prefer to bear the ills they know than to fly to others they know not of. It is not possible to have an upper House constituted like the Senate of the United States or the German Reichsrat because Great Britain is not a federal state. The method used in constituting the French Senate would be practicable in Great Britain, but this body is not regarded by Englishmen as a model worth copying.

The future
of the
House.

Most people agree that an upper chamber in any well-organized government should serve as a check on the lower chamber, that it should provide a safeguard against hasty and ill-considered legislation. For that reason the members of the two chambers ought not to be chosen from the same districts in exactly the same way. On the other hand they ought not to be selected in such widely different ways that the two chambers will reflect irreconcilable points of view and get themselves into continual deadlocks. How to organize the two chambers on a different basis, yet on a basis not too different—that is a problem which Great Britain has not yet been able to solve.

The basis of
a bicameral
system.

But why not abolish the upper House altogether and get along with a single chamber? The members of the Bryce Conference were unanimous in their belief that such action would be unwise. They agreed that there are at least four distinct and essential functions that cannot be well performed save by a second chamber. These four functions are as follows:

Why not a
single
chamber?

1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

3. The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be almost equally divided.

4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of executive government.

The universality of second chambers.

Second chambers also have a pragmatic sanction. Every great legislature in the world is bicameral. The same is true of legislative organization in the smaller countries of Europe. The only important exception is Jugoslavia. There are two chambers in each of the British dominions and in all the states of the American union. An arrangement so nearly universal must have unquestionable merits.

Nobody and everybody.

Englishmen are in the habit of saying that the House of Lords represents Nobody while the House of Commons represents Everybody. But if the House of Lords were "reformed" and given a representative character the situation would be different. Then it would represent Somebody. Like the American Senate it would attempt to take a coördinate share in legislation. The House of Commons would no longer have supremacy; it would merely be part of a system of checks and balances. Naturally the Commons does not want a reform of that sort. It does not desire to build up a competitor of its own kind. "I don't want to say a word against brains," says one of the characters in *Iolanthe*, "but with a House of Lords composed exclusively of people of intellect, what's to become of the House of Commons?" That, indeed, is what the commoners are worrying about.

So the strength of the House of Lords, paradoxical as it may sound, arises from its weakness. By becoming weaker it has grown strong. At best it can now delay legislation; it can no longer

thwart the will of the popular House. With its fangs drawn it is no longer a menace to democracy, hence the need for reforming the Lords has lost some of its force. It is an anomaly, of course, that so small a body as the British peerage should bulk so large in the affairs of a great nation, but no American need cross the Atlantic to find anomalies in an upper chamber. That one duke should have the equivalent of a thousand votes cast by plain citizens is an absurdity, to be sure, but it is just as absurd that Nevada, with a population of eighty thousand should have the same representation in the Senate as New York with ten million. Americans will retort, of course, that this is because it is so stipulated in the constitution of the United States, to which Englishmen will reply that the hereditary structure of the House of Lords has been embedded in the constitution of Great Britain for ten times as long.

Let us not become perturbed when we find anomalies in the structure of any government. It is anomalous that people who live in Washington should never get a chance to vote—for anybody, anytime; but Washington is nevertheless the best-governed large city in the United States. So with the House of Lords. The true test of an upper chamber is not what it is but what it does. We may pocket the offense which it gives to our current conceptions of democracy if it successfully performs those functions which an upper chamber is assumed to perform. As Richard S. Childs once said, "the test of a democracy is whether it democs."

The essential functions which a second chamber ought to perform have been stated in the preceding pages. To what extent does the House of Lords perform them satisfactorily? On the whole it appears to be doing this fairly well. It examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such bills before they become part of the law of the land. It compels sober second thought and gives opportunity for passions to subside. It says, now and then, to the House of Commons: "The opinion of the country seems to be about equally divided on this matter. Suppose you hold up the bill until the people have a chance to discuss it further." It is rarely alleged in England, as it is so often in the United States, that measures are railroaded through. On the other hand the House of Lords has not shown itself disposed, during recent years, to go beyond its province and obstruct the passage of measures which the country is clearly in a mood to accept. It has accepted

The bogey
of an anach-
ronism.

General
utility of
the House
of Lords.

the diminution of its powers with as good grace as one might expect peers of the realm to show. Its members no longer feel irritated because great questions of public policy are virtually being settled by the House of Commons alone. To quote once more those amusing musical interpreters of the British constitution, Messrs. Gilbert and Sullivan, "they do not itch to interfere."

The course
of bills in
the Lords.

The procedure followed by the House of Lords in considering the various measures which come before it is different from that of the Commons. In the Lords there are no standing committees for public bills. All bills, after two formal readings, are debated in Committee of the Whole House before being read a third time. Debates in the House of Lords, when they take place, cannot be shut off by using the closure. If amendments are adopted in the upper House, the measure goes back to the Commons for concurrence. Then the Commons either agrees to the amendments, or insists on its own way, or some compromise is reached by an informal conference. Failing this, the bill is deemed to have been rejected, and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down by the Parliament Act.

The high
personnel of
the House.

There is a common impression that the House of Lords, being composed for the most part of men who have inherited their titles, is inferior to the House of Commons in the quality of its membership. Taking the entire personnel of the two chambers and striking an average, this impression may be correct, but if one were to select, let us say, the fifty ablest members of the Lords and set them alongside an equal number of the best drawn from the Commons, the Lords would not suffer by the comparison. The upper House contains in its ranks some of the foremost statesmen, jurists, theologians, scholars, bankers, and industrial magnates of the kingdom. Many of its members have been trained by long years of service in the diplomatic corps, in India, or in the colonies. These are the men who do the business of the House. Of course there are numerous peers, hundreds of them, who possess neither ability, interest, nor experience in public affairs; but most of these spend their hours elsewhere. They rarely darken the doors at Westminster, or if they do, they are wholly inactive in the proceedings. The peers who regularly warm the red benches and speak the mind of the upper House are men who have graduated from the Commons, or who have administered imperial dominions, who have sat

in cabinets or administered dioceses or presided in high courts or gained their peerages by some other form of conspicuous service.

Is there an upper house in any other country that has included among its members during the past thirty years an abler or more striking array than is represented by Salisbury, Lansdowne, Grey, Balfour, Asquith, Birkenhead, Reading, Tennyson, Kelvin, Bryce, Playfair, Lister, Cromer, Milner, Curzon, Haldane, Kitchener, Rothschild, Beaverbrook, Northcliffe, and Passfield? Some of these, it is true, did not take much part in the debates, for they were not politicians in any sense of the term. But the mere presence of these names on the roll of the House would at least seem to indicate that the chamber which some Englishmen (and most Americans) would promptly abolish is not without its quota of brains and versatility. A few years ago a visitor to the galleries might have observed, sitting on the benches not far apart, the three proconsuls, Curzon, Cromer, and Milner. One had been viceroy of India; one was the maker of modern Egypt; the third had been governor-general of South Africa. Can anyone doubt that a discussion of colonial problems, participated in by these men, would be worth listening to? It is not without reason that the House of Lords has sometimes been called "the Westminster Abbey of living celebrities."

A part of
the roll-call.

So while the House of Lords is unrepresentative in the usual sense of the term it is not altogether unrepresentative of the best in British national life—in industry, finance, agriculture, commerce, law, religion, and scholarship. There are plenty of peers with third-rate intellects, but most of them stay away from parliament. There are also, by the way, some men with heads of adamant in the Senate of the United States,—but they do not have the grace to stay uncounsed when the roll is called.

The most convenient source of information concerning the early development of the upper chamber of Great Britain are Luke O. Pike's *Constitutional History of the House of Lords* (London, 1894), the same author's *Political History of the House of Lords* (London, 1901), and A. S. Turberville's *The House of Lords* (Oxford, 1927). Holland and May, *Constitutional History of England* (new edition, 3 vols., London, 1912), contains much that is interesting on the later period. A brief general survey may be found in Sir William Anson, *Law and Custom of the Constitution* (fifth edition,

Oxford, 1922), pp. 200-241. The clashes between Lords and Commons during the past hundred years are described in G. Lowes Dickinson, *Development of Parliament during the Nineteenth Century* (London, 1895), also in J. H. Morgan, *The House of Lords and the Constitution* (London, 1910), in Ramsay Muir, *Peers and Bureaucrats* (London, 1910), and in H. Jones, *Liberalism and the House of Lords* (London, 1912). A volume by Adrian Wartner on *The Lords: their History and Powers, with Special Reference to Money Bills* (London, 1910) is useful on the particular phase of the subject with which it deals.

On matters relating to the legal status of the peerage the standard work is F. B. Palmer, *Peerage Law in England* (London, 1907). Mention should also be made of Erskine May, *Treatise on the Law, Privileges and Usages of Parliament* (12th edition, London, 1917). A. P. Burke's *Genealogical and Heraldic History of the Peerage and Baronetage*, commonly cited as "Burke's Peerage," gives detailed information concerning all holders of titles.

Brief discussions of the House of Lords, its composition, powers, and influence, may be found in Anson's *Law and Custom of the Constitution*, Vol. I, chap. v; Lowell's *Government of England*, Vol. I, chaps. xxi and xxia; Marriott's *Mechanism of the Modern State*, Vol. I, chap. xv, and the same author's *English Political Institutions*, chaps. vi-vii; Ogg's *English Government and Politics*, chaps. xiv-xv; and Courtney's *Working Constitution of the United Kingdom*, chap. xi.

The various proposals to reform the House of Lords are dealt with in W. S. McKechnie, *The Reform of the House of Lords* (Glasgow, 1909); W. L. Wilson, *The Case for the House of Lords* (London, 1910); and the *Report of the Conference on the Reform of the Second Chamber* (1918), commonly known as the Bryce Report.

Discussions concerning the purpose and value of an upper house may be found in Sir J. A. R. Marriott's *Second Chambers* (Oxford, 1910); H. B. Lees-Smith's *Second Chambers in Theory and Practice* (London, 1923); G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926); Ramsay Muir, *How Britain is Governed* (New York, 1929), chap. vii; H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910); and in the volume by H. L. McBain and Lindsay Rogers on the *New Constitutions of Europe* (New York, 1922). The chapter on this subject in J. S. Mill's *Representative Government* is still worth reading although it was written many years ago.

CHAPTER VII

THE SUFFRAGE IN GREAT BRITAIN

Let the king consult his realm, give it equal dealing,
Listen to the common voice, catch the public feeling.

—Translation of a *Thirteenth Century Political Ballad*.

The ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community.—*John Stuart Mill*.

In the second book of the *Iliad*, when the steadfast Ulysses sought to influence his followers, he addressed their leaders with his "winged words." He did not argue with the rank and file. It would have been a waste of his fiery rhetoric. But the modern statesman cannot confine his preachments to the leaders of the people; he must go directly to the people themselves and endeavor to mould the public mind by appeals to reason, emotion, or prejudice as the occasion may require. For the development of universal suffrage has made the will of the people supreme.

Appeals to
the people.

A history of the suffrage would be a history of government, indeed a history of civilization. If it takes two stout volumes to explain how a part of the world has voted,¹ it would require a dozen to describe how the whole world has done it at the various stages in its history. From the time when the children of Israel refused to obey the voice of Samuel and shouted with one voice, "Nay, but we will have a king over us," to the constitutional referenda of the twentieth century there is material for a long story, much too long for narration in these busy days.

The long
story of the
suffrage.

But if anybody with an antiquarian turn of mind desires to study the evolution of the suffrage from primitive times to the present, no country would afford him a better field for this purpose than Great Britain. Men have been voting in that kingdom, under a variety of conditions and restrictions, for more than a thousand years. There has been no break in this continuity, even during epochs of civil war and revolution. Representative institutions

Best illus-
trated in
England.

¹ Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918).

passed out of existence in the great countries of the Continent during the seventeenth and eighteenth centuries but in Britain they hung on, although at times by a rather precarious grip. There has never been a single year, from the time of Alfred the Great to the present day, in which Englishmen did not elect somebody to represent them somewhere—in township-mote or county court, in borough council or House of Commons.

The Saxon
era.

In Saxon times the right to a voice in the Witan was restricted to the magnates of the realm. In the local councils, however (the township- and shire-motes), the free man who was not of noble rank obtained recognition. He attended the one in person and was represented in the other by men of his own choice. In that sense manhood suffrage existed in England from earliest days. But no one looked upon representation as a right in those days. If any king of Saxon England had set out to compel his people to be represented in the Witan, he would probably have had a rebellion on his hands.

Suffrage under the
Normans.

The coming of the Normans altered many features of English government but left the system of representation substantially unchanged. The Norman great council, like the Saxon Witan, was composed of earls, barons, bishops and abbots; of great men only, each of whom came in reponse to the royal summons. In the township and county courts (or councils) the Saxon practice of personal attendance and of representation on the part of all the freemen was continued. But it was somewhat impaired, so far as the township was concerned, by the growth of feudalism which converted many of the old Saxon townships into manors and manorial boroughs. William the Conqueror rewarded his followers by giving them large estates which often comprised several townships. In such cases the township-mote became a manorial court, presided over by the lord's bailiff. In the manorial boroughs, likewise, the authority of the lord replaced that of the freemen. It was not until the boroughs began to obtain their charters in the twelfth and thirteenth centuries that the freemen of the towns once more obtained control of their own town government.

The beginnings of
popular suffrage.

Mention has already been made of the fact that knights of the shire, chosen by the representatives of the freeholders in the county court, were summoned to the great council at various times during the thirteenth century and that these county representatives became in time a regular element in parliament. It will also be re-

called that the boroughs were summoned to send representatives to parliament and that these borough representatives combined with the knights of the shires to form the House of Commons. The knights were chosen at the meetings of the county court by the common assent of all the freeholders of the county; the borough representatives were elected by all the burgesses or freemen of the borough. British parliamentary suffrage began, therefore, on a basis that was at least democratic in theory, with no precise distinction between the qualifications for voting in counties and boroughs. This was not the result of a revolution in 1215 or at any other date. The Great Charter may have been revolutionary in some of its provisions but it extended the suffrage to nobody who did not have it before. The right of the freeman to have a voice in the election of his local rulers far antedated the victory of the barons over John Lackland. It was, in theory at least, the earliest basis of English local government.

But the suffrage did not forever remain democratic, even in theory. In the reign of Henry VI (1429) provision was made that none should vote in the counties except those who held freehold land with a rental value of at least forty shillings per year. This was a sweeping disfranchisement inasmuch as many freehold estates, perhaps the majority of them, had a rental value of less than forty shillings. The "forty-shilling-freeholder," however, determined the election of members of the House of Commons in the counties of England from that date to the passage of the Great Reform Act in 1832.

The reaction against it.

Meanwhile the suffrage in the towns was also narrowed, although not as a result of any special enactment. The theory that every freeman had a right to vote remained in existence, but the definition of a freeman became steadily less comprehensive. In some towns the list of freemen was confined to those who held land under certain forms of tenure, or who paid certain forms of local taxation. In others it was whittled down to gild-members or members of certain industrial organizations. In some boroughs, indeed, men could only acquire "the freedom of the town" by being born the son of a freeman, or by marrying a freeman's daughter, or by paying a fee into the town treasury. In very few towns were the requirements exactly alike; each developed its own rules, precedents, and practice. But in general, during the interval between the fifteenth and the nineteenth centuries, the borough suffrage

How the suffrage was narrowed.

everywhere grew more restricted; this development being assisted by the king who desired to control the House of Commons and found that towns with few voters could be more easily controlled than those which had a large number.

Mediæval
elections in
England.

Now it may seem at first glance surprising that the masses of the people, both in country and town, should have permitted the franchise to be so easily taken away from them. But this is only because in the twentieth century people have come to look upon the suffrage as something worth fighting for. Nobody looked upon it in that light five hundred years ago. No salaries were then paid to members of parliament from the national treasury; each county or town had to defray the cost of its own representation. Often the election went to anyone who could be induced to pay his own expenses. Sometimes there was great difficulty in getting anybody to do this. Hence towns occasionally sent petitions to the king asking that they be relieved of the burden of sending representatives to parliament. Much oratory has been spilled in declamations about the way "our Anglo-Saxon forefathers fought for the right to vote," but the sober prose of it is that nobody thought the right to vote worth fighting for until about a hundred years ago.

Suffrage
rules be-
come con-
fused.

It was only when the House of Commons began to get the upper hand in government that representation in it came to be looked upon as a privilege. Meanwhile the suffrage requirements had become chaotic. In the counties every forty-shilling-freeholder was entitled to vote, but there were many different forms of freehold tenure. In some towns the right to vote had been granted to nearly all the adult male inhabitants; in others not one per cent of the population were "freemen of the town." In some boroughs the suffrage included all "pot-wallopers," that is, all adult males who had possession of any premises in which food could be cooked. So it often happened that when a man's house burned down he left the chimney standing and on the eve of an election might be seen kindling a fire in it as evidence of his political qualification. In others none but members of the municipal corporation could vote. Membership in this corporation might be obtained by birth, by marriage, by purchase, by grant,—in a dozen different ways. Every town was a law unto itself. Whether a man could vote depended on where he lived.

Govern-
ment by the
few.

Representation in the House of Commons, moreover, was not distributed according to population; every county and every bor-

ough, whatever its size, had two members. Under these conditions it is a mere figure of speech to say that the House of Commons, prior to the great reform of 1832, represented the people of Great Britain. The total population of Great Britain and Ireland in 1831 was about twenty-four millions, of whom more than five millions would have been entitled to vote under a system of universal suffrage. As a matter of fact the number of those who actually possessed the suffrage was less than a million, and probably a good deal less. England during the first quarter of the nineteenth century was not a democracy in fact. Nor was the United States for that matter. Both countries were governed by the upper classes of society. As Blackstone put it, England was ruled by "the gentlemen of the kingdom," thus making it (to use his words) a government "wisely contrived and highly finished."¹

The worst feature of English government at this time was not the narrowness or diversity of the suffrage but the gross inequality of the counties and towns which sent two members each to parliament. No general redistribution of seats had been made for a long time. Meanwhile some boroughs and counties had stood still or diminished in population, while others had greatly increased. The Industrial Revolution, with its introduction of steam power and smoke-belching factories had changed the face of the country. It drew off population from some rural districts until they had almost no inhabitants at all; on the other hand it crowded tens of thousands into the newer factory towns such as Manchester, Birmingham, Leeds, and Sheffield. Yet the depopulated boroughs kept sending members to parliament while the new centers of population got no increased representation and in some instances had no representatives at all. This was not the result of a sinister design on anybody's part; it was merely the product of the great economic change. Population had shifted; the distribution of seats in parliament had not. It was the old story of laws and political institutions failing to realize that a new era had come.

The result was a horde of "rotten boroughs" and "unfranchised cities" all over the country. The former were old towns from which the inhabitants had departed, leaving only the ruins of their homes and the graveyard behind them. What had been thriving villages at the beginning of the eighteenth century were being

Inequality
of representation
in
parliament.

The
"rotten"
boroughs.

¹ See the panegyric on the government of England which concludes Book iv of Blackstone's *Commentaries*.

Old Sarum
and Corfe
Castle.

turned into sheep farms at the end of it,—raising wool for the new steam factories. “The shepe have become such greate devoweres and so wilde” lamented one writer of the time, “that they pluck up and swallow down the very men themselves.” Old Sarum was the classic example of these blighted constituencies, a flourishing place in older days, which began to slip during the eighteenth century and drifted into the nineteenth without a single house inhabited. It had seven “freemen,” however,—all of them non-residents, and these seven retained the right to elect two members of parliament. They did it, of course, from among themselves. The borough of Corfe Castle was another ghost of a constituency; on the eve of the great reform it consisted of a ruined manor house and a few dilapidated outbuildings. The owners of this ramshackle property likewise elected a brace of members to the House of Commons.

Downton,
Malmes-
bury, and
Bute.

The borough of Downton lived up to its name, for it was deep down and entirely under water, the sea having swept over it and made it an uninhabitable salt-marsh; but this catastrophe did not mean that Downton stopped sending members to parliament. A few non-resident freemen attended to that. Malmesbury had thirteen voters, no one of whom could read or write. They voted by a show of hands. The Scottish constituency of Bute, however, was the prize pocket borough of them all. Its voters' list contained one name. On election day this lone voter regularly appeared at the polling place, called the roll, answered to his own name, moved and seconded his own nomination, put the question to the vote, and was unanimously elected a member of parliament.

The specu-
lation in
seats.

These decayed boroughs naturally fell a prey to speculators who bought them for the sole purpose of controlling the representation. In this way a parliamentary bootlegger sometimes managed to get a half dozen or more seats into his possession. These seats became his “patronage” to sell or give away as he saw fit. Hence the origin of a term which has passed into the political vernacular of all English-speaking peoples. There is not much difference, in fact, between the English patron of a century ago and the American political boss of to-day. Often the patron had an eye to profit and put up the seats for sale to the highest bidder. This was not done *sub rosa*, but by open advertisement in the newspapers. There was a great demand for these seats, especially among the “nabobs” as they were called, men who had returned from India after making

their fortunes.¹ By spirited bidding they ran the prices up to a high figure and sometimes as much as three thousand pounds had to be paid for the privilege of writing M.P., after a bourgeois name. The House of Commons, as "the best club in London," afforded an opportunity for social advancement. Lord Chesterfield in his famous letters to his son (1767) expressed disgust that even noble lords were profiteering in the sale of their pocket boroughs. Still, some very able men got their start in politics by the favor of patrons—as they have often done in America through the favor of bosses. William Pitt entered the House of Commons as member-designate for a pocket borough; so did Charles James Fox.

It should not be imagined, of course, that the majority of the members in the House of Commons, prior to 1832, were chosen in this way. But the proportion was sufficiently large to give these patrons the balance of power. It enabled them to block every project for widening the suffrage or redistributing the seats. Moreover, in counties and boroughs where the electorate was too large to be controlled by a patron, there was a great deal of open bribery. Some wealthy outsider, seeking to capture the seat, would come in with his gold. The voters would hold off until they got their price. The polling extended over a week or more and in a close election the price usually went a little higher each day. In the last hours of the polling it sometimes rose to twenty or thirty pounds per vote. A "freeman of the town" who sold his vote at the top of the market had no need to work for a living during the rest of the year. "The House of Commons," said Pitt, "is not representative of the people of Great Britain; it is representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, and of foreign potentates." This, by the way, was the House of Commons which passed the Stamp Act, placed the taxes on tea, attempted to coerce the colonies, and provoked the American Revolution.

Electoral
corruption.

The movement for a reform of the suffrage and for a redistribution of seats began as early as 1775, but for various reasons it made slow progress. The excesses of the French Revolution gave it a setback. Then, for a dozen years, Europe was convulsed by the great conflict with Napoleon, and it was not until after the Corsican had been safely caged at St. Helena that the people of Great Britain could give due thought to their own domestic problems.

The move-
ment for re-
forming the
suffrage.

¹ See also *below*, chap. xviii.

The close of the Napoleonic War was immediately followed, moreover, by a wave of conservatism, a resurgence of autocracy such as invariably follows a great war. The ten years following 1815 were not favorable for the launching of political reforms. England was tired of continental turmoils, anxious to live in tranquillity within her own sea-girt bounds, anxious to build up her own industry, and disinclined to do anything rash. Reform had to await a change in the national temper.

Its connection with the need for social and economic reform.

Great wars are followed by conservative reactions but they also create problems of economic and social reconstruction which cannot be solved by reactionaries. England after 1815 had become an industrialized country with her millions of people huddling together in mushroom factory towns. Yet the authorities did not sense the fact that this reorientation meant new needs, new problems, new laws, new politics. Hence there was no town planning, no provision for water supply or sanitation, no serious attempt to prevent overcrowding in the houses occupied by the workers. The hours of labor were long and the pay was low. Women and children in large numbers were required to work under conditions which menaced the future of the race. A few social and economic reformers cried out in protest against the existing conditions, but they were looked upon as wild asses of the desert. (The pioneers in great reforms usually are.) Nevertheless they kept on and soon aroused a far-reaching popular demand for laws in the interest of the factory worker, for a readjustment of the tax burdens which the war had imposed, and for an improvement in the conditions of urban life. To this clamor the unreformed House of Commons made no response, hence it gradually dawned upon the people that no program of social or economic betterment could be put into effect until parliament had itself been reconstructed. Political reform, in other words, must come first.

The final victory.

Political reconstruction, however, was not an easy thing to achieve, for the obstacles were great. Peers and patrons were in the way. The inherent conservatism of the middle-class Englishman, his fondness for old traditions, his aversion to drastic changes—these were hard to overcome. The movement for political reform did not show much progress until 1830 when, by a fortunate combination of circumstances, a Whig ministry came into power. The next year it ventured to bring in a reform bill. The House of Commons passed it; the Lords threw it out; the Commons passed

it again. A bitter conflict then ensued between the two chambers and the issue was for a time in doubt. In some countries such an impasse might have led to civil war. But ultimately the Lords gave way and the Great Reform Act of 1832 went on the statute book. A revolution in the spirit of English government was accomplished without firing a shot.

The Act of 1832 is perhaps the most important statute ever passed by the British parliament. First of all it dealt with the redistribution of seats. The act did not provide for a general redistricting, nor did it adjust representation to the number of voters in each district, but it cleared away the most glaring inequalities. The rotten boroughs and pocket boroughs were for the most part obliterated from the list of constituencies. Some of the smaller boroughs were consolidated while others had their representation reduced from two members to one. In this way nearly one hundred and fifty seats were gained for distribution among the more populous new towns and counties. The act gave at least one representative to every populous community.

In the second place the Great Reform Act overhauled the suffrage requirements. Parliament might have taken this opportunity to make the suffrage uniform in both counties and boroughs, but did not do so. The old distinction between county and borough suffrage was retained. In the counties the franchise was extended to include not only the forty-shilling-freeholders but tenants of lands having certain higher rental values. In the towns a uniform suffrage was substituted for the old diversity of requirements, by enfranchising all "rate-paying occupants who were assessed on a rental value of ten pounds or more per annum," in other words any occupant of premises having an assessed rental value of a dollar a week or thereabouts. But it did not extend the suffrage to lodgers, or those who merely rented furnished rooms, hence it went considerably short of full manhood suffrage. Still it is estimated that the Act of 1832 added more than half a million voters to the lists, thus nearly doubling the total number.

While this measure quieted public clamor for the moment, it did not bring the reform movement to an end. The constituencies were still uneven; the secret ballot had not yet come into use; elections continued to extend over several days; and electoral corruption was still prevalent. Groups of militant reformers known as Chartists kept up a spectacular campaign for a new Magna

Provisions
of the Great
Reform Act:

1. Redistri-
bution of
seats.

2. Widen-
ing of the
suffrage.

The Second
Reform Act,
1867.

Carta, a new charter of liberties which would guarantee manhood suffrage, equal constituencies, the secret ballot, annual elections, and other democratic reforms. Chartism did not succeed in its program, but the drift of public sentiment eventually became strong enough to compel a further widening of the suffrage. Strange to say, the Conservatives were the ones who started the Second Reform Act of 1867, a measure introduced by the Disraeli cabinet. This adroit Jewish premier hijacked the Liberals of their best political ammunition.

A further extension.

The Act of 1867 provided for a further redistribution of seats by taking members from the smaller constituencies and giving them to the larger ones. It also extended the suffrage in both counties and boroughs, more particularly by including all "ten pound lodgers" in the borough lists.¹ Although this extension stopped short of manhood suffrage, it added almost a million voters to the electoral lists, or about twice as many as had been admitted by the Great Reform Act of thirty-five years before.

From 1867 to 1885.

Much tinkering with the electoral laws took place during the next two decades, mostly in attempts to remedy specific defects in the electoral system. The secret ballot was brought into use (1872); the practice of keeping the polls open for a whole week was abolished and elections were confined in each constituency to a single day. Finally, a drastic law for the suppression of corrupt practices was enacted (1883). A further extension of the suffrage was granted in 1884 and a considerable redistribution of seats took place in 1885.

From 1885 to 1918.

From this latter date to the close of the world war there were no considerable changes in the system of electing members to parliament. Voting continued to be related, in some way or other, to the ownership or occupancy of property. But this was not so undemocratic an arrangement as it sounds, because owners, occupants, and lodgers constitute the great majority of the adult male population in any country. On the other hand the requirement that every voter should be an owner, a tenant, or a lodger, did disfranchise a good many farm laborers, domestic servants (coachmen, butlers, etc.), as well as sailors and other persons whose occupations required them to move about frequently from place to place. It is estimated that about two million names were kept

¹ That is, lodgers paying at least ten pounds a year as rental for their lodgings.

off the lists in this way. Moreover none of these electoral reform acts gave the suffrage to women.

There was a movement for woman suffrage in Great Britain before the outbreak of the world war, but it had made little headway. During the war, however, it gained strength by reason of the willingness with which thousands of British women went to work in munition factories, thus releasing large numbers of men for active military service. Public opinion swung over to the view that the women whose sacrifices helped to save England ought to be given a share in governing England. Yet it did not seem wise to precipitate a controversy over this issue while the war was raging. So the problem of settling the basis of a new electoral law which would grant equal suffrage and make various other changes without starting a controversy in parliament was referred to a large conference representing all the political parties and presided over by the speaker of the House of Commons. This conference agreed on a report, some provisions of which were in the way of compromises to secure unanimity. On the basis of this report a new electoral law was drafted.

This statute, which passed parliament without difficulty, is known as the Representation of the People Act (1918).¹ While primarily a measure for widening the suffrage it provided also for a slight increase in the size of the House of Commons and for a rearrangement of the constituencies. The membership of the House had stood for many years at 670, which made it second only to the House of Lords as the largest legislative chamber in any country. Nevertheless it was now increased to 707, the additional seats being distributed to those parts of the kingdom in which the population had most rapidly increased. (By the creation of the Irish Free State, however, the size of the House has now been reduced to 615.) The old distinction between county and borough constituencies was retained, but the suffrage qualifications were

The demand
for woman
suffrage.

The Act of
1918.

Its chief
provisions:

1. Abol-
ished the
old distinc-
tion be-
tween
county and
borough
suffrage.

¹ 8 George V, c. 64-65. A supplementary statute, known as the Representation of the People Act, No. 2 (10 & 11 George V, c. 35), was passed in 1920. It will be noted that the English practice is to designate acts of parliament by titles which give a clue to their contents. Thus, the Housing of the Working Classes Act, the Defence of the Realm Act, the Government of Ireland Act, the Government of India Act, and so on. To the student of political history this has an obvious advantage over the American plan of tagging measures with the names of congressmen. Such designations as the Sherman Act, the Adamson Law, the Volstead Act, the Esch-Cummins Law, the Mann Act, etc., convey no intimation as to what the law deals with.

now (for the first time) made absolutely uniform in both. Hence the distinction between county constituencies and borough constituencies is no longer of any practical importance. A borough member is one who represents a large town or city; a county member is one who represents a group of smaller towns, villages, and rural districts. But both are chosen at the same time, in the same way, and by the same suffrage. Each county and borough member represents approximately the same number of people. The present quota is about 70,000. In the United States the quota for each congressional district is about 275,000. Hence a congressman represents on the average nearly four times as many people as a member of parliament.

2. Gave voting rights to all adult male citizens.

The main provisions of the Act of 1918, however, did not relate to seats but to suffrage. The franchise was widened so that it now includes every male British subject twenty-one years of age and over, who has lived in any constituency or in an adjoining constituency for at least six months prior to the compilation of the voters' lists, is entitled to be enrolled as a voter. Or, if he occupies an office, shop, or any other business premises in the constituency, he may be enrolled as a voter though he is not an actual resident.¹ But the act put a limit on plural voting. Prior to 1918 a man who occupied property in several constituencies could vote in each of them, and as the elections were not held in all the constituencies on a single day he could travel around from one place to another in time to cast his ballot in each. Thus it sometimes happened that a man who had an office in London, a summer cottage in Brighton, a shooting lodge in Scotland, and a country house in Surrey could qualify as a voter on each of these premises and cast several ballots at a general election. This is no longer possible. No one, under any circumstances, may now vote in more than two constituencies. If he be an occupant in one constituency and a resident in another, he may vote in both.²

3. University representation.

In addition, all British subjects who hold degrees (except honorary degrees) from certain universities are entitled to cast their ballots for the election of those members of parliament who represent the universities (see pp. 146-147), and may also vote in the constituencies where they reside; but in that case they may not

¹ The premises must have a rental value of at least ten pounds per annum, that is, a little more than four dollars per month.

² A *resident* is one who actually lives in a place; an *occupant* does not live on the premises—as in the case of an office or factory.

also claim qualification as occupants of business property. Thus the principle of "one man, one vote," is not yet established in Great Britain although as a matter of fact the great majority of the electors have one vote only. The number of those who are entitled to a second vote under the existing laws is considerable, but it forms a very small fraction of the total electorate and many of those who possess the right do not exercise it.

The question of woman suffrage gave the parliamentary leaders a great deal of difficulty in 1918. Logic seemed to dictate that if women were admitted to the suffrage, they should be admitted on equal terms with men. But even logic has to reckon with the realities, and everyone knew that Great Britain had suffered a serious reduction in man-power by reason of the war. If the two sexes were placed on an equality, therefore, the women would considerably outnumber the men on the voting lists. Even those who favored woman suffrage were not sure that the creation of a preponderantly feminine electorate would be a wise action to take at a time when the nation was still in the throes of a struggle for existence (February, 1918) with the outcome of the war still in doubt.

After much deliberation, therefore, a compromise between logic and the interests of British man-power was reached by the establishment of a twofold restriction on woman suffrage. First, it was provided that women should not be eligible to vote until the age of thirty, and second, that they must either be occupants of property or wives of occupants. The Act of 1918 further arranged that a woman over thirty years of age, if a business occupant in one constituency and residing in another, might vote in both, as in the case of male voters. Moreover it gave women university graduates an additional vote on the same terms with men.

The action of parliament in providing an age differential for the safeguarding of political masculinity was of course not altogether satisfying to the woman suffrage organizations of Great Britain. Hardly was the ink on the statute dry when they began their agitation for an amendment to this compromise provision. The old guard of anti-suffragists put up a hard fight against "votes for flappers" as they called it, but unavailingly, for in 1928 an equal franchise bill was brought in by a Conservative ministry and passed both Houses. The voting age for women was reduced to twenty-one and all other legal differentiation between male and

4. Gave
voting
rights to
women.

But with an
age differ-
ential.

This age
limit is now
removed.

female suffrage was swept away. Five million more names were thus put on the parliamentary voters' lists, bringing the total electorate up to about twenty-seven millions or more than half the entire population. In this entire body of voters the women outnumber the men by about two millions.

British and
American
suffrage
rules com-
pared.

In the United States the same suffrage requirements are established for national, state, and municipal elections; but in Great Britain this is not yet the case. The voters' lists used in parliamentary elections vary somewhat from those used in municipal elections. In national elections there is virtually universal suffrage as in the United States, with the customary qualification of citizenship and residence; but in municipal elections the suffrage is still hitched up with ownership or occupancy. No one is eligible to vote at these elections unless he (or she) is an owner or occupant of some premises or the husband or wife of an owner or occupant. Hence it is that a man (or woman) may be a parliamentary voter but not a municipal voter, for the local suffrage is more restricted than the national.

Disqualifi-
cations.

There are certain disqualifications which render both men and women ineligible to be enrolled as voters at parliamentary elections. The list of disqualifications is sometimes facetiously stated to include "criminals, idiots, aliens, paupers, and peers." Criminals and idiots, while confined in public institutions, are not permitted to vote. Nor may anyone be enrolled unless he is a British subject by birth or naturalization. The term British subject, however, includes everyone who owes allegiance to the king and is not restricted to the inhabitants of the British Islands. It includes Canadians, Australians, South Africans, East Indians, as well as Englishmen, Irishmen, Scotsmen and Welshmen. Members of the peerage are excluded from voting at parliamentary elections because they are adequately represented in the House of Lords; but in municipal elections this exclusion does not apply. The right to vote at all elections, both parliamentary and municipal, was formerly withheld from paupers, that is, from those who are supported by the public poor relief funds; this disqualification was abolished by the Act of 1918; but paupers who are maintained in public institutions do not get their names on the voters' list because they are not deemed to have satisfied the residence requirement. Voters may also be disfranchised by the courts on conviction for certain corrupt practices at elections.

From the standpoint of the suffrage Great Britain has become, step by step, a real democracy during the past hundred years. In 1831 the parliamentary voters of Great Britain numbered less than one-twenty-fourth of the population; from 1832 to 1867 the proportion was about one-sixteenth. From 1867 to 1885 it stood at one-twelfth, but from the latter year to 1918 it went up to one-seventh. The Act of 1918, by admitting a large number of women voters raised the proportion to one-third, and the Equal Franchise Act of 1928 hoisted it to more than one-half. Thus the British electorate has moved from four per cent to about fifty-five per cent of the population in the course of a hundred years. It gives one a good idea of the irresistible march of political democracy.

The march
of democ-
racy.

The best history of the English parliamentary suffrage prior to 1832 is that given in the two volumes on *The Unreformed House of Commons: Parliamentary Representation before 1832*, by Edward and Annie G. Porritt (Cambridge, England, 1909). A later work in the same field is L. B. Namier, *The Structure of Politics at the Accession of George III* (2 vols., London, 1929). A good account of the conditions which prevailed in England on the eve of the great reform is contained in Charles Seymour's *Electoral Reform in England and Wales* (New Haven, 1915). The story of the "rotten boroughs" may be found in Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield Mass., 1918), Vol. I, chaps. iv-v. Mention should also be made of G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913); J. H. Rose, *The Rise and Growth of Democracy in Great Britain* (London, 1897); G. M. Trevelyan, *Earl Grey and the Reform Bill* (London, 1920); and J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914).

The further extensions of the suffrage are discussed in O. F. Christie, *The Transition from Aristocracy, 1832-1867* (London, 1927); in Homer-sham Cox, *Reform Bills in 1866 and 1867* (London, 1868); in J. H. Park, *The English Reform Bill of 1867* (New York, 1920); and in Sir Hugh Fraser, *Representation of the People Acts, 1918-1921* (London, 1922). The pre-war period is covered in H. L. Morris, *Parliamentary Franchise Reform in England from 1885 to 1918* (New York, 1921).

A full discussion of the Act in 1918 may be found in G. P. W. Terry, *The Representation of the People Act, 1918* (London, 1919); W. H. Dickinson, *The Reform Act of 1918* (London, 1918); A. O. Hobbs and F. J. Ogden, *The Representation of the People Act* (London, 1918); and J. L. Seeger, *Parliamentary Elections under the Reform Act of 1918* (London, 1921).

The question of woman suffrage in England is discussed in W. L.

Blease, *The Emancipation of English Women* (London, 1913); Emmeline Pankhurst, *My Own Story* (New York, 1914); and R. Strachey, *The Cause; A Short History of the Women's Movement in Great Britain* (London, 1928).

A concise presentation of British suffrage development from earliest times to the present day is given in F. A. Ogg, *English Government and Politics*, (New York, 1929), chap. xii. Some interesting material relating to the topic is printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925).

CHAPTER VIII

NOMINATIONS AND ELECTIONS

Representative institutions will probably perish by ceasing to be representative. . . . A tendency to democracy does not mean a tendency to parliamentary government or even toward greater liberty.—*W. E. H. Lecky.*

How to transmit the force of public opinion into public action—that is the crux of popular institutions.—*Albert Bushnell Hart.*

Members of the House of Commons are the only persons connected with the central government of Great Britain who are chosen by popular vote. All others owe their positions to inheritance or appointment. The country is divided into parliamentary districts or constituencies, and for the most part each constituency elects one member. There are, however, some two-member constituencies. The present House of Commons contains 615 members, distributed as follows: England and Wales, 528; Scotland, 74; Northern Ireland (Ulster), 13. Each member of the British House of Commons (with the exception of the university members) represents on the average about 75,000 people or about 40,000 voters. According to the constitution of the United States there must be a redistricting after each decennial census; in Great Britain there is no such requirement either by law or by custom. Parliament rearranges the constituencies at irregular intervals; the last general redistricting was in 1918, while the one before that was in 1885. Thus there has been only one reapportionment in the last forty-five years.

It is of interest to note the way in which this redistricting is done. In 1918 the first step was to appoint a Redistribution Commission composed of persons in whose integrity and independence the House of Commons had confidence. This commission was directed to prepare a plan for the redistribution of seats, but the principles which they were to follow were laid down by the House in resolutions which had been agreed upon by all parties. The commission held local inquiries all over the country and thereafter drafted recommendations which were finally embodied in a bill, placed before parliament, and passed with no substantial changes.

The ordinary constituencies.

How they are mapped out.

No gerry-
mandering.

This procedure might seem to give opportunity for gerrymandering, but English political traditions are strongly against anything of the kind and there has been virtually none of it. All the constituencies, so far as is practicable, follow historical boundaries; they include a single town, or two contiguous boroughs, or a part of a large city, or what is left of a county after the towns have been taken out. They are never constructed by piecing together parts of different boroughs or different counties. When a county or a borough is parcelled into two or more constituencies these are known by names, not by numbers as in the United States. Thus a member of parliament represents the West Derby division of Liverpool, or the Darwen division of Lancashire, whereas a member of congress sits for the tenth Massachusetts district, or the eighth Illinois congressional district.

The univer-
sity consti-
tuencies.

Not all the seats in the House of Commons, however, are allotted to boroughs and counties. The older British universities have for many years been entitled to representation in the House of Commons, and fifteen seats were allotted to all the universities by the Act of 1918. This represented a slight increase over their previous quota. By the withdrawal of the Irish Free State the number of university members has been reduced to twelve. Two members are allotted to Oxford and two to Cambridge, one to the University of London, three to the four Scottish universities (Edinburgh, Glasgow, Aberdeen, and St. Andrews), one to the University of Wales, two to the English provincial universities (Manchester, Birmingham, Durham, etc.), and one to Queen's College, Belfast. The voters' lists in these university constituencies include all British subjects who hold degrees or have satisfied the stated requirements for a degree.¹

How uni-
versity
members
are elected.

The list of university voters is prepared by the governing body of the university from its lists of graduates, leaving out those who are not British subjects. When a university constituency is entitled to more than one member, as in the case of the Scottish universities, the election is determined according to the principles of proportional representation, thus giving the minority a chance to be represented. It is not necessary that voters shall come to the university on election day and vote in person. They are allowed to send their ballots by mail to the polling officer.

¹ This last proviso applies to Cambridge which permits women to enroll and to fulfil all the stated requirements, but as yet does not confer degrees on women.

The practice of according representation to the universities has existed in Great Britain since the reign of James I. Its origin was connected with the king's attempt to control the Commons, but the universities soon ceased to elect the royal nominees and sent men of sterling independence to parliament. University representation thus became a fixture. Although it involves a departure from certain fundamental principles in parliamentary representation and offends the equalitarian fetich, there has been no great popular outcry against it, and in 1918 the number of university members was somewhat increased.¹ The fact that it involves a political discrimination in favor of the educated classes does not seem to rankle in the British mind. The universities, as a rule, choose men of ability and of liberal views. With one or two exceptions they are far from being strongholds of toryism. Even the Labor party has a large number of university graduates in its ranks and among its leaders.

A comment
on the sys-
tem.

In Great Britain a general election must nominally be held at least once in every five years, but parliament is supreme in its power to prolong its own life when it decides to do so.² It did so during the war years 1914-1918, thereby affording a fine illustration of the way in which the British constitution can be adapted to the needs of the hour. The Congress of the United States, no matter what the emergency, cannot prolong its own life for a single day.³ Whether in war or peace, there must be a congressional election every second year. British elections do in fact come oftener than once in five years; sometimes two have taken place in one year, as in 1910, or three in successive years, as in 1922-1924. This is because the prime minister can at any time advise the crown to dissolve parliament and issue writs for a general election. Occasionally his hand may be forced by the opposition in parliament, but more often he either lets parliament run its term, or, with a close eye on the drift of public sentiment, decides to advise a dissolution and a general election when the chances of victory look promising.

The dura-
tion of a
parliament.

¹ A franchise bill which was brought in by the Asquith ministry in 1912, but later withdrawn, contained a provision abolishing university representation. This proposal evoked a great deal of opposition, even from unexpected quarters.

² But it should be noted that a measure to prolong the life of a parliament is outside the scope of the Parliament Act, and hence cannot in any circumstances be passed without the assent of the Lords.

³ Occasionally, however, it manages to prolong its life for an hour or so. This is done by instructing the sergeant-at-arms to stop the clock when the hands approach midnight on March 3.

The uncertainty.

Naturally the members of the House do not like the idea of a new election until their full five-year term expires, for an election campaign means expense to them and the risk of defeat also. But the prime minister is the generalissimo, and it is he who decides, with the help of his cabinet, whether good strategy dictates an appeal to the country. Having made up their minds, however, the ministers can keep the decision secret until their own campaign plans are in readiness. On a few occasions they have been able to "spring an election" upon their opponents, catching the latter unawares. But the opposition has learned that it pays to be vigilant and nowadays it is seldom caught napping. Still the privilege of choosing the time for an appeal to the country gives the ministerial forces a distinct advantage.

Fixing the election date.

So nobody can predict just when the next British election will come. But after a parliament has been in existence for two or three years the political pot begins to simmer. A rumor that parliament is going to be dissolved always find some believers until it is officially denied. Presently the newspapers begin to announce "from an authoritative source," or "on trustworthy information" that a dissolution of parliament is being considered by the ministry. In the end, after various false alarms, an official announcement settles the matter by giving the exact dates for the nomination and the polling. The interval between this announcement and the date for the nominations is usually brief, sometimes only two or three weeks. That being the case, the political parties do not delay the selection of their candidates until the date of the election is known. They have them in readiness long before the announcement comes.

How nominations are made.

The methods by which the parties choose their candidates are not alike in all the constituencies, and in any event these methods can be best explained in connection with a survey of party organization and activities a little later. But the official nomination procedure is very simple. All that a candidate need do, in order to get his name on the ballot, is to file a nomination paper signed by ten qualified voters of the constituency. This document he hands to the "returning officer" on the day designated for the making of nominations. The returning officers are named *ex officio*; in a borough the mayor always serves, and in a county the sheriff. When a constituency spreads over more than one borough or county the home secretary designates which mayor or sheriff is to

act. In the university constituencies the vice chancellor or some similar academic official serves as the returning officer.

On the day set for making nominations the returning officer attends at the town hall or court house or other convenient place and the nomination papers are handed to him by the candidates or their agents. One hour is allowed for this purpose; then the nominations are closed. Although only ten names are required on nomination papers it is customary for the candidates to gather a much larger number, sometimes several hundred. This is done by way of advertising the candidate's popularity. With his nomination paper each candidate must also place in the hands of the returning officer a deposit of one hundred and fifty pounds sterling. This requirement of a deposit is intended to discourage frivolous or hopeless candidacies. If the candidate receives more than one-eighth of the total vote on election day his deposit is returned to him; otherwise it is forfeited and turned into the national treasury. Some deposits are forfeited at every election.

The papers
and the de-
posit.

Apart from this requirement the most distinctive feature of the British nomination system is its simplicity. There are no primaries as in the United States. So far as the official requirements are concerned, anybody can have his name submitted to the voters if he is willing to risk a few hundred dollars. Getting ten signatures is no trick in a constituency of thirty or forty thousand voters. But the deposit is another matter and serves as an effective deterrent to those who merely desire to gratify their personal vanity by getting their names on the ballot. At any rate it is only on rare occasions that more than three candidates appear in any single-member constituency, and until the rise of the Labor party there were usually not more than two. Sometimes only one candidate is nominated and when the time for filing papers has expired he is declared elected unopposed.

Simplicity
of the plan.

For many centuries no one could be nominated for election to the House of Commons unless he possessed a property qualification. This requirement is now abolished. Any British subject who is qualified to be a voter may stand for election in any constituency. Women are eligible. It is not necessary, either by law or by usage, that he be a resident of the constituency which he seeks to represent. Non-resident candidacies are common, although perhaps not so common as they used to be. In Great Britain, as in every other country, the voter naturally prefers one of his own neighbors to

Qualifica-
tions of
candidates.

Non-resi-
dent candi-
dates.

a stranger, provided other things are equal or nearly so. But British voters are much more ready than those of other countries to sink this preference if the outsider is a man of distinctly superior qualifications. In every House of Commons there are members, sometimes a good many of them, who sit for constituencies in which they do not reside and never have resided. Mr. Gladstone, in his long term of service, sat for five constituencies, one after another, and did not live in any of them. There is a great advantage in this absence of a residential requirement, for it enlarges the field of selection, gives a good man more than a single chance, and thus helps to maintain high standards of candidacy.

The polling
day.

The polling takes place on the same day throughout Great Britain except in the university constituencies. Nominations are made on the eighth day after the date of the royal proclamation summoning a new parliament; the polling is held on the ninth day after the nomination. Prior to 1918 the returning officer in each constituency was given a certain amount of leeway in fixing the election date, with the result that the polling did not take place everywhere on the same day. Certain counties and boroughs would vote on Monday, others on Tuesday, some more on Wednesday, and so on for a whole week or longer. Clerks and counters moved from one constituency to another, being hired by the returning officers. As they were experts, the polling-machinery ran smoothly and errors in counting the votes were rarely found. On the other hand this habit of stringing the elections over a week or two had some objectionable features. It prolonged the tension and excitement of a general election. It gave the constituencies which voted last an advantage over those which voted first. They could see how the election was going and swing to the winning side, which not infrequently they did. When half the constituencies had voted the result was usually predictable. This took most of the excitement out of the election long before it was finished. So the Act of 1918 provided for a one-day general election as in the United States. In all the constituencies the polling now occupies the hours from eight in the morning till eight at night, but the polls may be opened at seven and kept open until nine, if the candidates so request, and occasionally this is done in thickly-populated constituencies. There is no such general uniformity of polling hours in American congressional elections. Each state, and sometimes each city, fixes its own hours for opening and closing the polls.

The register of voters in each constituency is made up and revised twice a year without any reference to whether an election is impending. Thus the list is always in readiness. The function of preparing it belongs to the registration officer in each constituency. He is usually the town clerk of a borough, or the clerk of the county council, as the case may be. Prior to 1918, when the suffrage was tied up with the ownership or occupancy of property, it was the practice to compile the voters' list from the assessment rolls. But since the establishment of virtually universal suffrage it has become necessary to secure the names by resort to something like census-taking methods. The compilation is not made, as in most American states, by requiring the voters to come to a certain place and be registered. The British registration officer appoints canvassers who go about from house to house collecting the names of all those who are qualified to vote. These canvassers, early in July of each year, make their rounds with a copy of the last previous list, finding out at each house what changes have taken place during the preceding year. When they present their reports to the registration officer, the latter makes up a provisional list which is then posted in various public places—at the town hall, the post office, sometimes even in the vestibules of the churches—with an announcement that all claims and objections must be made within a certain interval.

How the list of voters is compiled.

Anyone who finds that his name is not on this provisional register may apply to the registration officer to have it put on, and anyone can object to the inclusion of a name already there. The registration officer, after hearing such claims and objections, makes known his decision in each case, but this decision may be appealed to the courts. After an interval has been allowed for the making of such appeals the register is closed and thereafter no changes can be made in it until the next semi-annual revision. Attached to the regular list is a supplementary register of absent voters. This includes the names of persons who, by reason of their being in the military or naval service, or for some other good reason, are likely to be absent from the constituency when an election is held and hence have asked to be put on the special register.

Revising the list.

In Great Britain the register of voters, when finally closed, is deemed to be infallible. Under no circumstances may anyone vote unless his name is on it. The Act of 1918 is explicit on this point and permits no exceptions. It matters not that a name was left

The list, when revised is held infallible.

off inadvertently and through no fault of the voter. No officer or court has authority to make changes in the final register. No one may "swear in" his vote at the polls, as is sometimes permitted in the United States. And, conversely, if the name of any person is erroneously placed on the list he is customarily allowed to vote even though he is obviously ineligible. There is some question, nevertheless, as to whether the inclusion of a name on the register is absolutely conclusive evidence that the owner of the name has a right to vote. For although the Act of 1918 explicitly provides that anyone whose name is on the register shall be entitled to vote, it adds the qualifying proviso that this shall not "confer a right to vote on any person who is subject to any legal incapacity to vote." It would seem, therefore, that a person who is under age, for example, need not be permitted to vote if his name should happen to get on the list in error. But not all polling officers understand it that way and at every election there are stories about some infant being carried into the voting booth to mark a ballot.

The ballot.

The ballot used in parliamentary elections is short, simple, and bears no party designation. It contains merely the name, address, and vocation of each candidate. The names are set down in alphabetical order and each name is followed by a blank space in which to mark a cross. The ballot is hardly larger than an ordinary envelope. They are arranged in a pad like counter-checks on a bank counter, and similarly attached to each ballot by a perforated line is a numbered stub or counterfoil. The purpose of this counterfoil is to enable the poll clerks to keep track of the ballots. These counterfoils are torn off before the ballots are placed in the box and are kept to check up with the total number of votes cast. The ballots are printed at the public expense under the supervision of the returning officer and are furnished by him to each polling place. The returning officer also designates the polling places and assigns to each poll a deputy returning officer or presiding officer of the poll, together with a poll clerk for every five hundred registered voters. Each candidate is also allowed to have an agent inside the polling room.

Polling
places.

The polling places are usually located in public buildings,—at the town hall, a school, or a court house—but it is often necessary to hire space in private buildings as well. Within the polling room are screened compartments in which the voter marks his ballot. Then he drops the ballot into the box and walks out with

a feeling that he has helped to save the British empire from catastrophe. The ballot box is merely a covered tin box with a slot in the lid. It is not a complicated churn-like contrivance with a handle for inserting the ballots, such as is used at American elections. When the poll is closed the box is sealed and sent to the town hall or other headquarters where the counting is to take place.

The presiding officer of the poll, the poll clerks, and the agents of the candidates are all sworn to secrecy. The only function of the agents is to check off the names of those who vote and guard against the personation of voters. They have a right to challenge any voter on the ground that he is not the person whose name is on the list, but not on any other ground. Challenges are decided by the presiding officer of the poll and there is no appeal from his decision. Ordinarily if the voter makes a sworn statement that he is the person whose name appears on the list the presiding officer will accept this statement. Challenges are less numerous than at American elections.

Challenging
voters.

Absent voting has been permitted in parliamentary elections since 1918. Persons who are on the absent voters' list or are unavoidably absent from the constituencies in which they are enrolled as voters may appoint proxies to vote for them. These proxy papers are filed with the returning officer. No person except a near relative or some one who is himself a voter in the constituency may serve as a proxy. Instead of appointing a proxy to vote for him, however, the absent voter may obtain a ballot in advance of the election and send it to the returning officer by mail, but this alternative is not open to him unless he mails the ballot from somewhere within the kingdom. A voter who is absent at sea or outside Great Britain must use the proxy method in order to have his vote counted.¹

Absent
voting.

When the poll is closed, and the ballot boxes brought to a central place, the counting is done by the returning officer and his assistants. The procedure of counting the ballots is quite different from that followed in the United States where the work is done at each polling booth. In Great Britain the first step is to verify the number of ballots in each box with the total as shown by the poll records. Then all the ballots from the various polling places are

Counting
the votes.

¹ A proxy paper, unless cancelled in writing, remains effective so long as the maker's name continues on the absent voters' list.

mixed together. This is done in order that no one may know how the vote stood at any particular polling place. Only the totals for the whole constituency are announced; hence no candidate can ever tell from the official count whether he ran strong in one ward or parish and weak in another.

No post-mortems.

This will sound strange to the ears of any American politician. Every candidate for Congress insists on knowing the result in each precinct, and those who are defeated sometimes spend a good deal of time in a post-mortem analysis of the figures. But at a British election, when the thousands of ballots have been shuffled beyond any such possibility, they are divided into bundles according to the candidates for whom they have been marked, and the ballots in each bundle are then counted. Spoiled ballots are taken out and put in a special envelope. In spite of this centralized counting a large proportion of the results are announced before midnight on the day of the election. Within a certain space of time any candidate can demand and obtain a recount.

The movement for proportional representation.

The parliamentary conference which prepared the plan for the Act of 1918 recommended that proportional representation should be established in all constituencies which elected more than one member. This idea met with great favor in the House of Lords, but was rejected by the Commons. It may seem surprising that the House of Lords, which is traditionally a conservative body and indisposed to any changes in political methods, should have been so eager for the introduction of the proportional plan. The reason, of course, is that the Lords were sagacious enough to see that the rise of the Labor party might soon place the other political parties in a minority. This is not to imply that the Lords are more sagacious than the Commons, but their own vicissitudes (as a House) have perhaps imbued them with a greater respect for the rights of minorities—at least in the abstract.¹

At any rate the issue dropped into the background until 1924 when a Labor ministry was in office but dependent on the support of the Liberals for keeping itself there. The Labor party had been agitating for proportional representation but when the issue now came before parliament the Labor ministry decided not to draw party lines and risk its hold on office. Instead it gave the Labor members permission to vote against the plan—which many of

¹ Proportional representation is used in some of the university constituencies. It is also used in the Irish Free State elections (see *below*, chap. xvii).

them did—and it was defeated. But the issue is not yet a dead one. It has occupied a prominent place in English public discussion since 1924 and will probably engage the attention of parliament before long again.

English parliamentary elections are conducted in a dignified and orderly way, with very little hubbub and virtually no corruption. It was not so in the old days. Some of Hogarth's drawings give us an idea of what an English election was like in the middle of the eighteenth century. Hired bullies went about intimidating voters. Day after day, while the voting continued, new hogsheads of beer were tapped at the expense of the candidates. Fights between the supporters of each party were of nightly occurrence and no Marquis of Queensberry rules applied. Heads were broken and eyes blackened in the name of patriotism. An election in those days turned bedlam loose in the town. Then, when the last vote had been polled and counted, the successful candidate was "chaired" by his friends—carried unsteadily above the heads of the crowd with the motley procession of inebriates following him.¹ It took England some time to recover from the debauch of a general election in the days of the Georges.

But now all this is changed, and something ought to be said about contemporary British campaigning, for the methods differ a good deal from those used in American congressional elections. In every British constituency there is, as will be explained later, a local association and committee for each party. Each party also has its national or central committee. The local associations are responsible for choosing their respective candidates, but if no good local candidate is available, or if sufficient funds cannot be raised in the constituency, the central committee is usually asked to help. It responds by "recommending" some non-resident candidate who is able to pay his own election expenses or for whom the national organization is willing to put up the funds. In the latter case, if the recommended candidate is "accepted" the central committee

Election
campaigns:

1. In the
old days.

2. At the
present
time.

The choice
of candi-
dates.

¹ The plowman's Hail-Fellow-Well-Met with the Squire,
Of his company proud, he hurrahs and he drinks,
And himself a great man of importance he thinks:
He struts with the gold newly put in his breeches,
And dreams of vast favors and mountains of riches.
But as soon as the day of election is over,
His woeful mistake he begins to discover.
The Squire is a member—the rustic who chose him
Is now quite neglected—he no longer knows him!

exercises a considerable influence upon the local campaign. Even among local aspirants for the party nomination the influence of the central committee is often a matter of consequence, the measure of its influence being the extent to which the local campaign has to be financed from central headquarters. One of the best ways for an aspiring young man to get into the House of Commons is to do effective organizing work at the national party headquarters and eventually get recommended to some constituency which is shy of good parliamentary timber. Some outstanding English political leaders have made their start in that way.

The electioneering begins early.

In any case, it is desirable that the candidates be placed in the field early, for no man knoweth the day or the hour when an election cometh. Such matters are not regulated by the calendar but are in the lap of the gods—and the prime minister. It is also desirable that the candidates should begin their campaigns early by speaking at gatherings whenever invited, and by taking every means to broaden their range of acquaintance in the constituency. So they appear at public functions of every sort, take an active hand in every good cause, and put their names on each subscription list that comes around. In other words they submit to a good deal of polite blackmailing and try to do it with smiles on their faces. All this is colloquially known as “nursing a constituency,” and the zeal with which some of the Labor candidates have out-nursed their rivals is highly instructive. It proves that the rise of Labor has not put an end to the money power in English politics.

“Nursing” a constituency.

Usage demands that a candidate shall be open-handed, if he can afford it, and that he shall keep on nursing his constituency after he has been elected. Does the parish church need a new bell? Or is the local boy scout troop raising a fund for a trip to London? Has the village cricket club a small deficit to be paid off, or is someone needed to provide a prize for the game on a national bank holiday? Candidates and members are panhandled for all such things without compunction. Individuals, as well as organizations, come forward with their palms turned up. There are legal limits to what a candidate may spend for election expenses; but there are no limits on his contributions to charity or to any public cause when an election campaign is not in progress.

Nursing a constituency is not merely a matter of spending

money. It involves time and patience also. The candidate must be in evidence at church fairs and parish picnics. He must show himself, betimes, at Rotary Club luncheons—for these booster institutions have now invaded England. He must greet all and sundry with a cordial handshake, call them by name and show an interest in their personal affairs. In the campaign he must address rallies, submit to heckling, and canvass voters to some extent. It is no longer possible for the candidate to make a personal call on all the voters in his constituency. He must get his friends and supporters to do most of it for him. Yet Gladstone once called at 2000 houses in the constituency of Newark, pulling the doorbell and asking for votes. He liked it, so he said,—and he won the election.

As soon as the date of a general election is announced, each candidate issues an address or manifesto to the voters of the constituency and broadcasts it through the mails. The laws permit each candidate to send one circular free of postage. These manifestoes give an outline of the candidate's views on the political questions of the day and call upon the electors for their votes and influence. Meetings are then arranged, usually in halls, but also on the street corners as is the fashion in American cities. At these meetings, even before the candidate has had his say, the members of the audience are permitted to ask questions. The privilege is mainly utilized by voters whose attitude is hostile—hecklers, they are called, because their aim is to heckle the candidate into saying something that can be used against him. Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings by the relative amount of applause which it bestows upon the candidate and his hecklers respectively. Only a quick-witted candidate with a ready tongue can come through this sort of campaigning with success. Even when the candidate is a woman, the heckling goes on. It adds zest and humor to the rallies. The saving grace of it is the tradition of giving everybody, candidates and hecklers, a square deal. Heckling is an institution which would not be tolerable but for the British tradition of fair play. Although it seriously detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues, the voters like it and would strenuously object to its discontinuance. Hence there is much complaint that the use of the radio by candidates is going to take most

Mani-
festoes and
meetings.

Heckling.

of the hilarity out of English election campaigns. You can turn off the loud speaker but you can't heckle it.

Political
advertising
in British
campaigns.

To some extent the candidates appeal to the voters through newspaper advertisements and by posters on the billboards. Not so much literature is sent to voters through the mails as in America. Most candidates employ "sandwichmen" who walk up and down the principal streets with placards tied to them fore and aft. On them are printed the party slogans and various catch-phrases importuning the people to mark their ballots for somebody "and Liberty," or for somebody else "and Cheap Bread," or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is far ahead of other countries. The billboards, during an election campaign, afford material for some interesting studies in the psychology of propaganda.

Personal
canvassing.

The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of "heeling" their districts, going from door to door in quest of support, but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate's helpers, but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed. Each name is written on a separate card with a blank space left for the canvasser's report. The cards, after the voters have been visited, are brought back to the committee room marked For, Against, or Doubtful. All the doubtful voters are then made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well-organized campaign. Every English voter expects to be canvassed on behalf of all the candidates, and feels himself slighted if he is not.

The candidates and party committees, by the way, are not allowed to hire canvassers; the laws forbid this, and the whole thing has to be done by volunteers. This means, of course, that some of it is well done and some of it very poorly. The difficulty of conducting these personal canvasses has been much increased, of course, by the large increase in the electorate due to the enfranchisement of women.

Less money, on the whole, is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States, and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate electoral frauds and set a maximum limit upon campaign expenditures. This statute, and amending acts, make a distinction between *corrupt* practices and *illegal* practices. Corrupt practices include bribery, intimidation, personation, falsifying the count—things which involve moral turpitude. Illegal practices include doings which are not wrong in themselves but which tend to make an election undignified, unduly expensive to the candidates, or in some other way objectionable. Hence the illegalities comprise the hiring of canvassers, or bands, or too many committee rooms, or paying for conveyances on election day. The laws also set a limit on legal campaign expenditures. This limit is fixed on a sliding scale at £350 for an urban constituency of not more than 2,000 voters, with an additional £30 for every additional thousand voters. In rural constituencies the initial allowance is £650 with an additional £60 per thousand—on the theory that the rural voter is harder to reach. In a city of 100,000 people, with 55,000 voters, the maximum legal expenditure would thus be about \$9,000. Translated into American figures the English limits would give the average urban congressman a right to spend nearly \$25,000 in getting himself elected, while rural congressmen would be entitled to disburse twice as much. In Great Britain the expenditures must be made through an authorized agent of the candidate, whose appointment is certified to the returning officer of the constituency. After the election this agent makes a sworn statement of all his disbursements, including the personal expenses of his candidate. This last-named item is im-

The cost of
getting
elected.

portant because such expenses are not usually reported after American elections.

Election
protests.

A defeated candidate for the House of Commons may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard, as in America, by the legislature itself; they are tried by the courts. When an election protest is filed in Great Britain the issue is referred to the King's Bench Division of the High Court, where two judges are assigned to hear all the evidence without a jury. The court then certifies to the speaker of the House of Commons its report confirming or unseating the member-elect. It is not the practice of the judges to void an election because of merely technical violations. They require evidence that there has been corruption or illegality on a scale sufficient to have influenced the result. Hence the voiding of an election is a relatively uncommon occurrence. If the matter in dispute relates to the legal qualifications of the elected candidate, and not to the manner of his election, it is investigated by the House itself and is not referred to the judges of the High Court for a recommendation.

Newly
elected
members
take their
seats at
once.

There are no "lame ducks" in English politics because no long interval elapses between the election and the summoning of parliament. As a rule the members are brought together at the earliest possible moment after a general election. No one ever sits in the House of Commons after he has been defeated at the polls. This is in accord with the spirit of the British political system which demands that members of the ministry, who constitute the administrative branch of the government, shall at all times possess the confidence and support of a majority in the House of Commons. The only way to determine whether the ministry possesses this support is to call the House into session. So long as a ministry continues in power after a general election without summoning parliament it is technically administering the affairs of the country without a mandate from the people.

In addition to the references given at the close of Chapter VII, mention may be made of the *Constitutional Year Book*, published annually, the *Year Books* of the three political parties, H. Fraser, *Law of Parliamentary Elections* (London, 1910) and Michael MacDonagh, *The Pageant of*

Parliament (2 vols., New York, 1921). Frank Gray, *The Confessions of a Candidate* (London, 1925) is an informing and amusing little volume. On the proportional representation issue reference may be made to J. H. Humphreys, *Practical Aspects of Electoral Reform* (London, 1922); G. Horwill, *Proportional Representation: its Dangers and Defects* (London, 1925); and C. G. Hoag and G. H. Hallett, Jr., *Proportional Representation* (New York, 1926).

CHAPTER IX

THE HOUSE OF COMMONS

With all humble and due respect to Your Majesty . . . our privileges and liberties are our right and due inheritance no less than our lands and goods; . . . they cannot be withheld from us, denied or impaired, but with apparent wrong to the whole state of the realm.—*The Commons' Apology of 1604.*

This being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms.—*Sir William Blackstone.*

"Six hundred talking asses, set to make laws, and to administer the concerns of the greatest empire the world has ever seen." In one of his irritable moments (which came all too frequently) Thomas Carlyle thus epitomized the most powerful and the most interesting of the world's legislatures.

A House
with a his-
tory.

As a representative lawmaking body, however, the British House of Commons has no rival in age, for nearly six centuries have run their course since "the faithful commons" began to function as a separate chamber. But it is not age alone that gives the House of Commons its high place among the lawmaking bodies of the present day. It is the classic example of a legislature with virtually unlimited authority. Its powers are unique in their range and in the absence of constitutional restraint. Parliament and the House of Commons are to all intents one and the same thing. The House has supremacy in lawmaking; it controls the finances of the realm, fixes the jurisdiction of the courts, and it dominates the action of the crown. The procedure of this House, moreover, is far more picturesque than that of any other representative chamber. It used to be said that the House of Commons was the best club in London and certainly there is no other legislative body that commands a keener rivalry for admission. It is an institution of which Englishmen are proud, and rightly so.

The older
meeting
places.

For many centuries the House of Commons has held its sessions at Westminster, a city which has now become a part of Greater London. Originally it met in the chapter house or refectory of Westminster Abbey, a structure which dates from the time of

Edward the Confessor, last of the Saxon kings. Then the Commons moved to St. Stephen's Chapel within the palace of Westminster, where it continued its sessions right through the eras of Tudors, Stuarts, and Hanoverians until 1834, when the palace was gutted by fire. Thereupon the new palace of Westminster, or the Houses of Parliament, as the great structure is now more commonly called, was erected during the years 1837-1852.

The Houses of Parliament flank the left shore of the Thames midway between Chelsea Bridge and the Tower and cover an area of nine acres. They form a vast edifice containing more than twelve hundred rooms, the largest building in Europe with the exception of the Vatican. The architecture of the building is Tudor Gothic and it is accounted the most impressive Gothic structure in existence. In the heart of the pile is a great central hall; to the south of this hall is the green chamber of the House of Commons; and to the north of it the red chamber of the House of Lords. Reaching out around these two great chambers is a labyrinth of lobbies, corridors, committee rooms, offices, retiring rooms, and other subsidiaries. In various parts of the building likewise there are libraries, dining halls, and smoking rooms, as well as living quarters for certain officers of parliament such as the speaker, the clerk, and the serjeant-at-arms.

Where the
House now
sits.

The chamber occupied by the House of Commons is cut off from all external outlook, and hence from the natural access of fresh air. The only light comes from windows above. The room is oblong in shape with a broad aisle running down the center. At one end of this aisle is the entrance; at the other end the speaker's chair is placed. There is a sliding brass rail or barrier at the entrance, alongside which sits the serjeant-at-arms. None but members are permitted to pass this entrance, which is called the bar of the House. On either side of the aisle are long benches upholstered in green leather, rising tier on tier. The members sit (or sprawl) on these benches, with no desks in front of them. No seats are assigned to individual members. It is odd, by the way, that this "best club" should have such deficient accommodation. By crowding the benches and using some reserved space in the side galleries it is possible to provide seats for about 450 members; but the total membership of the House is more than 600, which means that with a full attendance many are compelled to stand.

The Com-
mons'
chamber.

The front
benches.

But anything like a full attendance is a very rare occurrence. Two hundred is deemed to be a good turnout unless something of great and general interest is under discussion. No seats are regularly assigned, but members who are supporting the ministry customarily sit on the benches to the speaker's right while members of the opposition sit on his left.¹ The two front benches which face each other nearest the speaker's chair are known as the Treasury bench and the front Opposition bench respectively. The custom of the House is that members of the ministry sit on the one and the leading personages of the opposition on the other.

The Eng-
lish theory
of repre-
sentation.

Although members of the House are elected by districts or constituencies they look upon themselves as representatives of the United Kingdom at large. They do not think of their own districts first, last, and all the time as American congressmen and French deputies do. The House is both a representative and deliberative body; but deliberation is stressed more than representation. Is it proper that this should be so? Should a legislator be guided by his own conscience and patriotism or should he always defer to the interests and desires of the constituents who elected him?

Edmund
Burke's
view of it.

That is an old question. A hundred and fifty years ago Edmund Burke dealt with it on the hustings at Bristol, and his speech has become a classic on one side of the controversy. Burke declared that a member of the House ought to maintain the most unreserved communication with the voters of his constituency; he ought to discover their wishes and give such desires great weight. To that extent he should serve as their delegate. "But his own opinions, his mature judgment, and his enlightened conscience," Burke went on to say, should not be sacrificed by a member of parliament to any man, or any set of men, constituents or outsiders. A member's conscience is a "trust from Providence, for the abuse of which he is deeply answerable." He does not derive his conscience from the law or the constitution. "Your representative owes you not his industry only, but his judgment also, and he betrays instead of serves you if he sacrifices it to your opinions." Some years later, at the election of 1780, Burke returned to a defense of his position. In another striking speech he declared to his constituents: "I did

¹ When the ministerial party has a large majority, however, the overflow goes to the left also.

not obey your instructions. No, I conformed to the instructions of truth and nature. I maintained your interests against your opinions. I am to look indeed to your opinions, but to such opinions as you and I must have five years hence." But this defense did not avail. The resentment of the Bristol voters against Burke's defiance of their wishes was too strong to be overcome and he was obliged to retire from the contest, badly beaten. During the past century the constituency of Bristol has been roundly condemned by political philosophers for having placed its own selfish interest ahead of parliamentary independence, and thus repudiating so distinguished a representative; but are there many election districts in any country that would not do the same if the issue were boldly presented to them as it was in this instance?

The chief function of the House of Commons is to protect the people's rights and to assure their liberties against oppression. It was for the attainment of these ends that the House developed. But with whom, other than themselves, can the determination of the people's rights and liberties be safely entrusted? A government in which a few people, howsoever chosen, determine on their own discretion what the rights of other people are, and what the people's well-being demands—such a government would not be a democracy, but an oligarchy. The wishes of the voters may be ill-judged, and their opinions occasionally erratic; but is there any guarantee that the wishes and opinions of their representatives would be less so? The world has tried many ways of winnowing the politically wise from the masses of the people—birth, education, lot, election—but the experience of centuries has taught that by all of these methods you get much chaff with the wheat. There is no reason to believe that the judgment of representatives, in the long run and on the average, is of any higher excellence than the public opinion of those who have chosen them. That is the ultimate justification of the delegate theory which Burke scorned.

On the first day of the session the members of the Commons assemble in their own chamber. If it is a new parliament, that is, a parliament meeting for the first time after a general election, the members must begin by electing a speaker. But by ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done, and by usage he does this from his place in the House of Lords. So the commoners spend a few minutes in a buzz of conversation until the official messenger of

A word in
defense of
the delegate
theory.

How the
House
begins its
work.

the Lords (commonly known as Black Rod),¹ appears and invites the House to come across the hall. Whereupon, headed by the clerk of the House, the commoners troop through the great corridor to the bar of the Lords where they stand in silence while the lord chancellor announces "His Majesty's pleasure that you proceed to the choice of some discreet and learned person to be your speaker." Then the commoners, without a word in reply, wander back to their own chamber and with the clerk of the House as their temporary mentor proceed to do as they have been bidden.

Electing a speaker.

The election of a speaker, as will be indicated a little later, is usually a mere matter of form and takes but a moment. The choice must be approved by the crown, but this also is a mere formality, the royal approbation being announced to the Commons by the lord chancellor. The speaker now takes the oath of allegiance and the members, in groups of five at a time, do likewise. Then comes another call to the House of Lords to hear the speech from the throne.² Preceded this time by the sergeant-at-arms, the members once more betake themselves to the gilded chamber where they crowd into the rear portion of it and into the galleries as best they can.

The speech from the throne.

The speech from the throne is delivered either by the monarch in person or by someone whom he designates for this duty. It is never a long address and its delivery usually consumes but a few minutes. As has already been mentioned, it is prepared by the prime minister in consultation with his cabinet. It comments upon the general state of the realm, adds a paragraph or two on foreign relations, foreshadows the more important government measures which are to be introduced, and invites the House of Commons to grant the appropriations needed for carrying on the government. When the speech is finished the commoners return to their own chamber where the speech is reread to them by the speaker. Before this is done, however, the House advances a dummy bill through its first stage—this to demonstrate that it can do business on its own responsibility. The bill selected for this purpose is always the same, namely, "A Bill for the Better Preventing of Clandestine Outlawries." It is never advanced to a second reading.

¹ His full title is "Gentleman Usher of the Black Rod." His insignia of office is an ebony rod tipped with gold.

² In the case of a newly-elected parliament the election of the speaker takes place on the first day and the speech from the throne is delivered on the day following. The members do not take the oath until after the speaker has been chosen.

Then the House proceeds to debate an "address in reply" to the speech from the throne. This address is always in common form, being merely an expression of loyalty to the crown and of satisfaction with the recommendations made. Its adoption is moved and seconded by two private members from the ministerial side of the house who are designated for this purpose by the prime minister. The opposition may then propose amendments to the address, in which case the first debate of the session is precipitated. As a rule, however, the address is adopted without change and the House is then ready to plunge into its routine business.

The address
in reply.

The House of Commons meets on Mondays, Tuesdays, Wednesdays, and Thursdays, at quarter to three o'clock in the afternoon. On Fridays it meets at eleven in the forenoon. These Friday sittings are reserved for private business, motions, petitions and notices. No meetings are ordinarily held on Saturday, the chamber being thrown open to visitors on that day. The forenoons are kept free for committee work. The sittings of the House usually last through the afternoon and into the evening. There is no regular adjournment for the evening dinner hour but the chamber is usually well emptied between the hours of seven and nine, unless business of an exciting nature is before the House. The rule is that opposed business may not be proceeded with after eleven o'clock at night unless on motion of a minister; but unopposed business may be dealt with for a half hour later. At 11:30 the House adjourns unless certain specified business is under consideration, in which case it may remain in session all night and even through the whole of the next day.¹ The Friday sittings always close at 4:30 P.M. no matter what business is under consideration.

The regular
sittings.

Despite this possibility of all-night sessions, the rules of the House permit the application of the closure in order to shut off debate, as will later be explained; and the ministers regularly ask the House to limit debate in this way whenever the dilatory tactics of the opposition are seriously interfering with the progress of government measures. Forty members of the House constitute a quorum, which is only about seven per cent of the entire membership. In the American House of Representatives the requirement is two hundred and eighteen members. Although the actual attendance at sittings of the House of Commons is relatively slim,

The small
quorum.

¹ The longest continuous sitting without adjournment was one which lasted from Monday afternoon until Wednesday morning, during the session of 1881.

many other members are within reach in the lobbies, the smoking room, the library, the restaurant, or during fine afternoons on the terrace. They are at hand if needed—if any question is pressed to a vote. When the House is plodding its way through routine matters the back benches yawn in emptiness. In fact a great deal of business is done with fewer than forty members present, without a quorum, for the speaker pays no attention to the quorum requirement unless some troublesome member asks for a count.

The
speaker.

The speaker is the most conspicuous figure in the House.¹ Despite his title, he never speaks in debate nor does he say more than a minimum in any other connection. He is supposed to speak for the House, not to it. His position is as old as the House itself and his title is derived from the fact that he alone has the right to speak for the House of Commons before the king. Originally the speaker's chief function was to take petitions and resolutions from the House and lay them before the king in parliament, that is, in the House of Lords; for it will be recalled that in early days the House of Commons was a petitioning rather than a lawmaking body. The House besought the king to make laws, redress grievances, and the king complied when he felt so inclined. The speaker was merely the bearer of these numerous and sometimes unwelcome requests. Hence his post in early days was no sinecure, for if the monarch happened to be out of humor, Mr. Speaker sometimes found himself the target of the royal irritation.

Some notable
speakers.

The first to bear the title of speaker was Sir Thomas Hungerford in 1376. For several centuries the office was usually held by a lawyer, and some noted jurists figure on the lists of speakers, including Sir Thomas More and Sir Edward Coke. When the crown and parliament came into conflict, as so often happened during the Stuart era, the speaker had to be a rare diplomat in order to keep from incurring the wrath of the one or the other. Students of English constitutional history will recall, for example, the case of Sir William Lenthall, who was speaker of the House when Charles I strode into the chamber with a troop of soldiers and tried to arrest five of its members. But the offending members had been warned and had vanished from the chamber before the king arrived. Ad-

¹ In addition to the speaker, the chief officers of the House are the clerk and the sergeant-at-arms. Both are appointed by the crown on the advice of the prime minister and both hold office for life. The clerk and his assistants are in charge of the House records; the sergeant-at-arms has various ceremonial functions and is the agent of the House in the exercise of its authority.

vancing to the speaker's chair, Charles demanded to know whether any of the five members were present. Lenthal fell on his knees and replied, "May it please your Majesty, I have neither eyes to see nor tongue to speak in this place but as this House is pleased to direct me." "I see," said the king, "that all my birds are flown," and with that the crestfallen monarch stalked out of the House amid cries of "Privilege! Privilege!"

Although the choice of a speaker must be approved by the king, it is inconceivable that this approval will ever be refused, for the selection is really made by the prime minister before the House acts at all. In other words, the prime minister selects the speaker after consultation with the members of his cabinet and after assuring himself that the choice is generally acceptable to the House. The nomination is then made and seconded by two private members in order to perpetuate the fiction that the choice is that of the whole House and not that of the ministers. Both the House and the king accept this nomination as a matter of course, for neither could refuse their concurrence without registering a lack of confidence in the ministry.¹

How the speaker is chosen.

So, when the prime minister has chosen his man, all else is mere routine. The so-termed "election by the House" is not an election at all but a pantomime. The clerk starts the proceedings. An ancient custom forbids him to utter a syllable, so he merely points with his right forefinger at some member of the House whose name has been given to him as the mover of a motion to choose a speaker. This member thereupon rises and moves that so-and-so "do take the chair of this House as speaker." Then the clerk, in the same dumb pantomime, indicates a member on the opposition side who has been picked to second the motion. The speaker-designate then rises in his place and humbly submits himself to the will of the House, which acclaims him with cheers.

The picturesque pantomime.

The motion to elect is not put to a vote, for there is no contest save on the rarest occasions. The speaker who has served in the preceding parliament is by custom always reelected, even though the ministry has changed. It has not been uncommon, therefore, for a Liberal to serve as speaker with the Conservatives in power, and vice versa. If a speaker dies or does not return as a member of

¹ The approval of the crown has never been denied since the principle of ministerial responsibility became recognized. The last refusal was in the case of Edward Seymour (1687).

the new parliament, the prime minister makes a new choice, usually designating the deputy speaker for promotion to the speakership. Only once in the last fifty years has the opposition put forward a rival candidate and the circumstances in this instance were quite unusual.

The speaker
a non-parti-
san.

The speaker, from the moment he takes the chair, ceases to be a party man. He discards his party colors, be they buff, or blue, or red. He is no longer a Liberal, a Conservative, or a Labor partisan. He attends no more party gatherings and is not called into consultation on any matters of party policy. He must be a neutral in politics. This neutrality, moreover, is not a fiction, as is shown by the fact that the speaker is never opposed for reelection in his own constituency. At each general election his constituency (in accordance with a time-honored local party armistice) sends him back to parliament unopposed—so long as he remains speaker. Politics is adjourned in the speaker's bailiwick. When a member of the House of Commons is chosen to the speakership, therefore, he need give no further thought to the repair of his own political ram-parts. He has made his calling and election sure.

Prestige of
the office.

No wonder the speakership is regarded as a prize, an office not only of great honor but of long tenure. Its emoluments are also substantial. The speaker receives a liberal salary; he has an official residence in Westminster Palace, and he gets both a pension and a peerage when he retires.¹ But every rose has its thorn, and the speaker must accept with his office a sentence of exile from politics. That comes hard to one who likes the wager of battle. Whether in entertaining his friends at dinner, or in recognizing members who desire to speak, or in ruling on points of order, he must act with the impartiality of a chief justice. If he has personal and political likes or dislikes, as most public men have, he must somehow manage to keep them submerged.

The speak-
er's work.

Even when called upon to give the casting vote in case of a tie, the English speaker does not act in accord with his own political or personal opinions. He breaks a tie by voting in obedience to certain well-established principles. If, for example, his negative

¹ Both the peerage and the pension are matters of usage. There is no statutory provision that the speaker shall have either. But when a speaker retires it is the custom of the House to present an address to the crown stating its willingness to vote the money for a pension if the crown asks for it. The peerage, of course, is within the gift of the crown without parliamentary action. In 1928 the retiring speaker, Mr. J. H. Whitley, declined such an honor.

vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the speaker always votes "Aye." If a tie comes on a proposal to adjourn the debate, he always votes "No." If he be in doubt as to how he should vote, or as to the proper ruling on any question of order or privilege, he inquires from the clerk of the House, who is a skilled parliamentarian. The speaker's rulings on points of order are final; they may not be appealed to the House. The speaker may, if he desires, submit any questions to the House for its opinion and may be guided by its decision, but when he makes a ruling on his own responsibility there is no overriding it. The House, on the other hand, can suspend its own rules by a majority vote at any time and thereby circumvent a speaker's ruling, but it very rarely finds occasion for doing so. The rules are suspended now and then, but not for this purpose.

The speaker's chair or high-canopied throne is at the head of the main aisle. Below and in front of it is the clerk's table. At the appointed hour for opening a sitting of the House the speaker's procession formally enters the chamber. Prayers are read by the chaplain; the mace is laid on the table and the speaker counts the members to ascertain the presence of a quorum. If forty members are not in the chamber, he takes a sand-glass which is kept at his right hand and turns it over. Meanwhile the bells in the corridors, lobbies, reading rooms, smoking rooms, and library begin to tinkle. The sand takes about two minutes to run from one of the glass compartments into the other and if a second count at the expiration of this interval discloses fewer than forty members, the speaker may adjourn the sitting.¹ The same procedure is gone through whenever anyone, after the sitting has begun, raises the question of a quorum. Adjournments for want of a quorum take place very seldom, for it is a rare occasion when fewer than forty members are not somewhere within call. It is the business of the whips (of whom more will be said hereafter) to see that these members are rounded up when needed.

How the
House
opens.

There is a common impression among Englishmen that the House of Commons, unlike other legislative bodies, has no printed rules. This popular impression is the basis of the hackneyed tale about a

The rules of
the House.

¹ If, however, the business before the House be the consideration of a message from the crown, it is proceeded with despite the presence of fewer than forty members.

new member who went to the clerk's desk on the first day and asked for a book of rules. "There is no book of rules," replied the clerk. "Then how am I to learn the rules of the House?" queried the neophyte. "By breaking them, sir," came the answer. The story is apocryphal, for the House of Commons has its printed rules, known as "standing orders," like any other legislative chamber. It ought to be added, however, that the standing orders do not cover the whole procedure of the House, much of which rests upon usage. And the usages are not all to be found in any printed book.¹ Many years of parliamentary experience are required to familiarize a member with all the intricacies of parliamentary procedure, and in that sense it can truthfully be said that new members learn the rules by breaking them and being called to order.

Their permanence.

Unlike those of Congress, the rules and standing orders of the Commons are permanent. They do not have to be readopted after each general election. Nor have they the rigidity of congressional rules, inasmuch as they can be suspended at any time, or amended, or repealed, by a majority vote. One might think this a dangerous power to place in the hands of the majority, but it has not been abused. When the rules of the House are suspended it is usually for the sole purpose of expediting business, with the consent of the minority, and not as a means of putting legislation through by steam-roller methods.

Nature of the rules.

The greater number of the rules and standing orders deal with the allocation of time for different classes of business (such as government measures, private bills, private members' bills, and questions) and with the course of procedure which these various matters must take. Measures introduced by the ministry, as will be more fully explained later, have the right of way. Private members' bills are crowded into odd hours. At the commencement of each daily sitting a limited amount of time, not exceeding an hour, is set apart for questions. This is a feature of English parliamentary procedure which has no counterpart in American legislatures. These questions, which may be asked by any member, are addressed to the minister within whose field of administration the matter belongs, or if the minister be a member of the House of

The "question time."

¹ Most of them, however, are in Sir Erskine May's book on parliamentary procedure, which is the English parliamentarian's Bible, just as Asher C. Hinds' *Precedents* serves a like purpose in the American House of Representatives.

Lords, to his representative in the Commons. No member may ask more than four questions at a single sitting. Save in exceptional cases it is required that due notice of intention to ask questions shall be given and the questions then appear on the printed program of business known as the "Orders of the Day," which each member receives at the beginning of the sitting. The questions are restricted to requests for information and according to the rules must not contain any "argument, inference, imputation, epithet, or ironical expression." But some of the questions come perilously near offending in this way and the speaker of the House, in such cases, may reframe them or even reject them altogether. The minister to whom a question is addressed may decline to answer it if it deals with some matter of diplomatic or domestic policy which ought to be kept confidential.

When "question time" arrives in the House, therefore, the members flock into their seats, for the interrogations and answers are a daily source of enlightenment—and often of amusement. "I beg to ask the chancellor of the exchequer question number one," says a member from one of the rear opposition benches. There is a fluttering of leaves as every one turns to the question as it stands printed on the Orders of the Day. Then the chancellor of the exchequer, or his parliamentary secretary, rising from the Treasury bench, proceeds to read the answer from the typewritten sheets in his hand. Sometimes it is a long explanation; sometimes a single curt sentence.¹ Following the explanation, supplementary ques-

Character
of the ques-
tions asked
in the
House.

¹ The following examples are culled from the *London Times* of April 30, 1930:

Mr. MACDONALD, Prime Minister, asked by Mr. HACKING whether a decision on the construction of the Channel Tunnel had been reached, said:—No; I cannot at present add to what I have already said in reply to questions on this subject.

Mr. HACKING.—Can the right hon. gentleman say when a decision is likely to be reached?

Mr. MACDONALD.—There is no delay. The report is in the hands of two or three different authorities who must consider it, and I cannot ask them to give me their reply until they have made up their minds. It is not a matter that can be settled in a day. It is the biggest piece of national policy of the kind that is before us at the present time, and there is no delay whatever.

Mr. MCKINLAY asked the Chairman of the Kitchen Committee why the price of apples sold in the House restaurant was 3d. each, seeing that this price was 200 per cent. higher than the outside retail price for similar fruit, although no rent or rates or depreciation or profit charges were part of the operations of the Kitchen Committee.

Mr. COMPTON replied that the apples sold in the refreshment department of the House were the best Empire fruit available, and, purchased by the case, cost a fraction over 2d. each. After taking all things into consideration, the Kitchen Com-

tions may be asked, but no debate or discussion follows the giving of replies.

Compared
with the in-
terpella-
tions.

Herein the procedure differs widely from the interpellation in the French Chamber of Deputies where, as will be seen later, the minister's reply is always followed by a debate and a vote. When a minister answers any question in the House of Commons there is no way of determining whether a majority of the members regard the answer as satisfactory. The House merely proceeds to the next item on the notice paper. At the close of the question period, however, any forty members can precipitate a discussion of a minister's reply by rising in support of a motion to adjourn. Then, if the speaker of the House accepts this motion as falling within the principles on which such motions are permitted, a debate is set for the same evening. But this procedure is not common. Large numbers of questions are placed on the Orders, many of them dealing with very trivial matters. They average from one hundred and fifty to two hundred per day.¹ Some years ago a committee which investigated the possibility of cutting the expenses of government made an estimate that the preparation of typewritten answers to these questions cost the English taxpayer about seven dollars and a half per question.

Value of the
question
privilege.

But members of the Commons value their right to ask questions and would not permit it to be curtailed. The moral effect upon the ministers is good, for they know that any administrative action, however unimportant, may be dragged out into the glare of publicity. Hence they must be vigilant during every question hour. Many of the questions seem trivial, to be sure, but the English minister has learned that more may lurk in a question than appears on the surface. An innocent-looking query is often propounded with intent to draw an offhand answer. Then comes a supplementary question which discloses what the questioner is really gunning

mittee were of opinion that the price charged to members—3d. each—was fair and reasonable. (Laughter and cheers.)

Mr. WELLOCK asked the Postmaster-General if he could state the charges for the new telephone service to Australia; and if he could now say whether an early reduction in the charges for the Transatlantic telephone service was contemplated.

Mr. LEES SMITH.—The charge in the service to Australia will be £2 a minute, with a minimum of three minutes. As regards the Transatlantic service, I hope to be able to make an announcement shortly. The service will be opened by a conversation between the Prime Minister and the Prime Minister of Australia at half-past 8 to-morrow morning.

¹ If the end of the question hour arrives before all the questions have been answered, the remaining answers are printed in the official report of the House proceedings.

for. The ministers are aware of all this (having been themselves the framers of questions while in opposition) and nowadays they are not easily trapped.

The importance of the question hour, with all that it implies, has not been sufficiently appreciated by foreign students of English government. It is an effective check upon those bureaucratic tendencies which are bound to appear in every government. It keeps the experts responsive to a body of laymen. Ministers sometimes get irritated at the flood of questions: their subordinates (who have to prepare the answers) blaspheme at the members who frame them; but the private citizen has no reason to complain. The question hour in the House of Commons is probably worth all that it costs the British taxpayer. As a palladium of his rights and liberties it is worthy to be ranked with trial by jury and the writ of habeas corpus.

While there is no opportunity for debate in connection with the questions, there is room for plenty of it at various stages in the passage of legislative measures. Most speeches in the House of Commons are short; it is quite unusual for anyone to speak longer than an hour, although this occasionally happens when measures of great importance are under discussion. The longest speech, according to the records, was a deliverance by Brougham who spoke for more than six hours in 1828 "to a thin and exhausted House." Anyone who has read Brougham's speeches can well believe it. But Prynne's historic plea for the life of Charles I (1648) occupied almost the same length of time, and Gladstone on one occasion spoke for five hours.¹ No time limit is fixed by the rules. But there is a limit to the patience of the members, and even the whips cannot always keep a quorum when long-winded orators take the floor. Speeches, whatever their length, are recorded verbatim and published in bulky volumes known as the *Parliamentary Debates* or more commonly, as "Hansard."² An hour's speech occupies fifteen or sixteen columns of this publication, hence a single debate may occupy a hundred pages or more.

Debates in
the House

In legislative bodies throughout the world a large part of the preliminary work is assigned to committees. The House of Com-

Committees
of the
House:

¹ None of these, of course, constitutes a world record. Pliny once spoke in the Roman Senate for seven hours. Several speeches in Congress have been much longer than Pliny's.

² The debates were originally published by Hansard as a private venture. They are now issued as an official publication under the control of the House.

1. Standing committees.

2. Select committees.

3. Sessional committees.

4. Private bills committees.

5. Committee of the Whole House.

mons is no exception. All bills now go automatically to one of its regular committees unless the House votes otherwise in particular cases. These committees of the House of Commons are of various types. First there are the *standing* committees on public bills, as they are called,—committees which are appointed at the opening of a session and remain unchanged until parliament is prorogued. To these standing committees, of which there are now six in all, certain classes of public bills are referred; each committee receiving the measures which fall within its particular field of jurisdiction. Second, there are *select* committees on public bills appointed to consider and report upon individual measures or questions which involve some new principle, or upon some subject which has not yet come before the House in the form of a bill. They gather information, examine witnesses, and so on. Third, there are some *sessional* committees, appointed for a single session to deal with certain designated matters such as the examination of petitions. Fourth, and highly important, are the *committees on private bills*, of which more will be said later.¹

Finally, there is the Committee of the Whole House. In other words, the entire House sits as a committee; the speaker leaves the chair and his place is taken by a chairman who is appointed afresh in each new parliament and is a stanch party man; the mace is placed under the table as a sign that the House, as a House has adjourned.² When the House resolves itself into Committee of the Whole its rules of procedure are relaxed; a member may speak several times on the same question if he desires; motions do not need a seconder; the previous question cannot be moved, and any matter which is voted upon can easily be opened for reconsideration. Because procedure in the Committee of the Whole House is so simple and flexible the practice of considering the details of measures in this way has proved popular not only in the House of Commons at Westminster but in the House of Representatives at Washington.³ It makes for informality if not for speed. When the Committee of the Whole House has finished with its consideration of a measure, item by item, a motion is made that the com-

¹ Pp. 189–190.

² He does not sit on the speaker's throne but at the clerk's table.

³ When the House of Commons is discussing revenue measures the Committee of the Whole House is called the Committee of Ways and Means; when it is considering appropriations or expenditures it is called the Committee of Supply. Colloquially, the members speak of "the House in Ways and Means" or "the House in Supply."

mittee "rise and report." The speaker then resumes the chair and the chairman reports the committee's action, in other words the House reports to itself and then proceeds to adopt its own recommendations.

In American legislative bodies, with the exception of the two Houses of Congress, all committees (apart from the Committee of the Whole) are ordinarily appointed by the presiding officer. This is true of most state legislatures, city councils, and indeed of unofficial organizations. In the House of Representatives at Washington the appointing of committees was for a long time in the hands of the speaker and this prerogative made him the virtual master of business. During the years 1910-1911, however, the rules of the House of Representatives were changed and the power of appointing committees was taken from the speaker. Committees in both branches of Congress are now appointed, in a roundabout way, by the Senate and the House themselves.¹ In the House of Commons the speaker has never had, at any time, the function of appointing committees. To give him this power would be to make his office the very negation of what it is supposed to be, namely, a sanctum of neutrality amid the warring factions of partisanship.

How committees are chosen in America.

Committees in the House of Commons (with the exception of the Committee of the Whole House) are chosen by a committee of selection. This committee of selection, which contains eleven members, is named by the House itself at the beginning of each parliamentary session. But while ostensibly named by the House itself, the membership of the committee of selection is arranged in advance by a conference between the prime minister and the leader of the opposition. In making up the various committees, this committee of selection does not pay strict attention to party lines, although members of the different parties are selected in something like the proportion that they have in the House as a whole. Nor does it give undue attention to seniority as is the case at Washington. Each standing committee ordinarily contains from forty to sixty members, but the rules of the House provide that from ten to fifteen supernumerary members may be added to serve during the consideration of any designated measure; the design being to strengthen the committee when some matter requiring special

How committees are chosen in England.

¹ See the author's *Government of the United States* (3rd edition, New York, 1931), chap. xvii.

knowledge is before it. Select committees are much smaller; they usually have fifteen members, while the committees on private bills have four members only. Each committee in the House of Commons has a chairman, but this official is neither named by the committee of selection, as is the practice in Congress, nor chosen by the committee itself. Instead, the committee of selection names a panel of chairmen and this panel chooses from its own membership a chairman for each committee.¹

The cabinet
as the chief
committee
of parlia-
ment.

The cabinet is not officially ranked as a committee of the House of Commons, yet it is in fact the greatest parliamentary committee of them all. It is the steering committee. It is the originator and the censor of all important business. Nothing of any general importance has much chance of getting through the House of Commons unless the ministry favors it or at least refrains from opposing it; on the other hand a measure has every chance of passing if the cabinet lends its support. There are exceptions to this general rule, of course, and these exceptions are naturally more frequent when a ministry is in office without having a majority of its own party behind it—as has happened in the case of the two Labor cabinets. But when a ministry controls a majority, as it usually does, there is no gainsaying its mastery of the legislative program.

Its relation
to the regu-
lar commit-
tees.

Nevertheless the cabinet's control of committees is by no means so strong as its control of the House. Party discipline is not so strict in the one as in the other. Hence it frequently happens that a standing committee amends a bill in a way which the ministers do not like. The minister in charge of the bill must then decide (usually in consultation with his colleagues) whether he will accept the amendment or ask the House to strike it out when the committee reports the bill. This the House will do if the ministry insists, but coercive tactics are not popular in England and the ministers often find it wise to concede or to compromise. In any event the minister in charge of a government measure must familiarize himself with every detail of it, must follow its course day by day in committee, and must guide it through the House. It is for this reason that the ministers are the real leaders of the Commons and collectively form "the great standing committee of parliament."

¹ In the case of the committees on private bills, however, the chairman is designated by the committee of selection.

Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is child of the other, and bears unmistakably the marks of its parentage, the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body, but it makes a much poorer showing in point of consistent attendance. It is a less animated body, with less noise and bustle and racket on its floor. Looking down from the visitors' gallery one sees the sprinkling of members lolling about on the benches, some with hats tilted down on their foreheads, others chatting with their neighbors, a few paying perfunctory attention to what is going on and still fewer wholeheartedly interested in the proceedings. The atmosphere is one of nonchalance and leisure. The House of Representatives, on the other hand, seems to a visitor in the gallery to be rushing its business at break-neck speed, with a bumper attendance of members, all of them busy, earnest, scurrying in and out, and with several congressmen seemingly desiring to speak at once. The atmosphere at the Capitol has no aroma of leisure. It can all be summed up in the saying that one body is characteristically English while the other is just as characteristically American.

The House of Commons and the House of Representatives compared.

In general atmosphere.

In America the speaker of the House is always a party man, chosen by a caucus of the majority members. His election is always opposed by the House minority and when he takes the chair he does not discard his party allegiance. On the contrary, he sometimes becomes a more aggressive partisan than he was before. The standing committees of the House of Representatives are much more numerous than those of the House of Commons and (with one exception) are considerably smaller in membership. Select committees are appointed in Congress on rare occasions only. In Congress, moreover, the chairman of each committee is designated when the committee is formed and the chairmanship almost always goes to the senior majority member; that is, to the member from the dominant party who has served longest on the committee.¹ In the House of Commons seniority of service also counts in the sense that a young or inexperienced member is not made chairman of an important standing committee, but among older and more experienced committeemen no stress is laid on

The two speakers.

¹ The next member in order of seniority is known in congressional parlance as the "ranking member."

relative length of service. Personal ability and the capacity to preside are what count at Westminster when chairmanships are being allotted.

Classifica-
tion of bills.

Another difference is that at Washington all measures, including money bills, go to a standing committee before being taken up by the House of Representatives in Committee of the Whole, whereas in England money bills go to this latter committee directly. Congress makes no distinction, moreover, between public and private bills in the English sense. Whether bills are general or special in their scope they all go to the regular committees. Most of the bills which go to committees in the House of Representatives never come back again; they die and are buried in the committee's files. In the House of Commons, on the other hand, every committee must return all the bills assigned to it for consideration. Again, the dominant party in the House of Representatives always obtains a majority on every important committee, a majority which is sufficient to ensure its control of the committee's action. In the House of Commons this is not necessarily the case. The standing committees are made up in a manner favorable to the majority party in the House, but the committees on private bills have only four members each and are constituted without any reference to party affiliations.

Leadership.

Finally, the most important of all contrasts is to be found in the fact that the cabinet of the United States has no direct connection with the process of lawmaking. It is not a steering committee of Congress, and Congress would resent its assumption of any such rôle. By virtue of the ministerial system the House of Commons is provided with a strong group of executive leaders who guide and virtually dominate its work. In the older textbooks on English government it is commonly stated that "the House of Commons controls the cabinet." Fundamentally, that is true, for the House can dismiss the cabinet from office at any time. But it is equally true that "the cabinet controls the House." Business is done because the cabinet leads and the House follows. It may refuse to follow, to be sure, but the fact remains that it rarely does so under any circumstances and practically never when the cabinet system is functioning as the theory of English government expects it to function. But the House of Representatives feels itself at full liberty to bolt presidential leadership, be the situation normal or otherwise. In no sense does the cabinet control the House at Washington.

The House of Commons must be summoned into session at least once a year or, to put it more accurately, there must not be more than a twelve-month interval between the close of one session and the beginning of another.¹ A session usually lasts from five to seven months. The House is ordinarily called together early in November. It adjourns from just before Christmas until late in January. Then it resumes and continues to sit until June or July, or perhaps a little later, with brief adjournments over week-ends and holidays. Each House may adjourn without reference to the other, which is not the rule at Washington. The President of the United States can adjourn Congress, in case the two Houses fail to agree on adjournment; the crown in England cannot adjourn either House. But when the cabinet decides that it is time to bring a parliamentary session to a close, it so informs the king, and parliament is accordingly "prorogued." Both Lords and Commons are prorogued together. Prorogation terminates all pending business; hence a measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again in order to become a law. When parliament has run its legal course of five years, or when the cabinet at an earlier date desires a general election, the crown "dissolves" the House and summons a new parliament. The terms adjournment, prorogation, and dissolution refer, therefore, to the end of a sitting, the end of a session, and the end of a parliament.

Annual sessions.

In summoning parliament both the Lords and Commons are invariably called to meet at the same time. In the United States the Senate may be called into session, and sometimes has been so called, without the House of Representatives. This is because its action may be needed to confirm presidential appointments or to ratify treaties. The British House of Lords has no powers of this character and there is accordingly no reason why it should meet when the Commons is not in session. Even for impeachments, the initiative of the latter is essential.

The organization, powers, and procedure of the House of Commons are dealt with in many books. The best summaries may be found in Sir John A. R. Marriott's *Mechanism of the Modern State* (2 vols., Oxford,

¹ For the reason see p. 46.

1927), Vol. I, chaps. xx-xxii; in Sir William Anson's *Law and Custom of the Constitution* (5th edition, Oxford, 1922), Vol. I, pp. 253-321; and in Frederic A. Ogg's *English Government and Politics* (New York, 1929), chap. xvi. More elaborately the topic is discussed in G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929); Sir Thomas Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of the House of Commons* (13th edition, London, 1924); Josef Redlich, *The Procedure of the House of Commons* (2 vols., London, 1908); Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921); Robert Luce, *Legislative Procedure* (Boston, 1922), passim; H. Graham, *The Mother of Parliaments* (Boston, 1911); Sir Henry Lucy, *Lords and Commons* (London, 1921); and A. I. Dasent, *The Speakers of the House of Commons* (New York, 1911). The *Standing Orders of the House of Commons* (revised and republished every few years) should also be consulted.

CHAPTER X

THE PROCESS OF LAWMAKING IN PARLIAMENT

The House of Commons is a very clumsy machine, but it works, and on the whole it turns out a good deal of work. It would be a better machine if men were a little less vain and more given to silence.—*John Bright*.

Much as I admire American institutions, I should not like to see their rules of procedure transferred to this House. Probably they have more eloquence there than we have here, but it seems to me that their rules tend to make the debate artificial.—*T. P. O'Connor*.

In the early stages of its history the House of Commons took no part in the formal enactment of laws. As has been said it merely petitioned the crown to make laws. Laws based upon the petitions of the House were then framed and enacted, at its own discretion, by the crown in council. But these laws were sometimes not in accord with the spirit of the petitions, and there were frequent protests from the commoners on that account. Eventually, in 1414, the king agreed "that from henceforth nothing be enacted to the petition of the Commons contrary to their asking." And soon thereafter the House of Commons adopted the plan of presenting its petitions in the form of bills, all ready to be enacted. With this step came the need for a system of parliamentary procedure, and presently there developed the practice of giving each measure three readings, referring it to a committee, and holding debates on it when differences of opinion arose.

The genesis of legislative procedure.

The procedure was very simple at first; but year after year new complications were added by action of the House or developed by usage. All systems of legislative procedure tend to become more complicated as they grow older. The existing process of lawmaking in the House of Commons is the outcome of a growth and development which covers nearly five hundred years, and legislative procedure in all other countries is to a large extent modeled upon it. The manual which Thomas Jefferson prepared while he was serving as Vice President (and presiding over the United States Senate) was in all essentials based upon the English parliamentary pro-

From simple to complex.

cedure of his day. The American House of Representatives in 1837 adopted a provision, which is still in force, that Jefferson's manual should govern its procedure in all matters not covered by its own rules. Thus it has come to pass that the rules of procedure in Congress owe their fundamentals to the older practice of the British House.

English and American procedure is substantially akin.

To the casual visitor, sitting in the galleries, the methods of lawmaking at Westminster and at Washington seem to be wholly unlike. But the differences, save in one important respect, are superficial only. They do not affect the underlying principles, which (with one exception) are the same in all English-speaking legislative chambers. Measures are introduced on both sides of the Atlantic in much the same way; they are given three readings, referred to committees, reported out, debated, amended, and sent to the other chamber. The differences relate principally to the position and powers of the speaker, the organization and work of the committees, the limitations on debate, and the distinction between public and private bills.

But there is one very important difference:

The distinction between public and private bills.

This last named difference is the most important one. In parliament a distinction has long been made, and is still made, between public and private bills; in Congress there is no such distinction. According to British parliamentary practice a public bill is one which affects the general interest and ostensibly concerns the whole people or, at any rate, a large portion of them. A measure for changing the tax laws is a public bill; so is a bill for altering the suffrage, or raising the age of compulsory school attendance, or establishing a new administrative department. A private bill, on the other hand, is one which relates to the interest of some one locality, or corporation, municipality, or other "particular person or body of persons." A bill authorizing the construction of a new street railway, or the extension of an old one, or permitting a city to borrow money for a municipal lighting plant, or empowering a corporation to do something not already authorized by its charter—anything of this sort is a private bill. There are some bills, of course, which come in the twilight zone between these two categories, but so many measures have been presented to parliament and ruled upon during its long history that the precedents now cover almost every conceivable case, and the speaker merely follows these precedents in deciding, when doubt arises, whether a bill belongs in the public or the private class.

Public bills may be brought in by a member of the ministry, in which case they are known as government bills. All money bills must be so introduced.¹ But public bills (other than those which relate to the raising and spending of money) may also be brought in by any private member; that is, by a member of the House who is not a member of the ministry. Such public bills are known as private members' bills and a word of caution should be added lest the reader drop into the pitfall of confusing these "private members' bills" with "private bills." Government bills, money bills, and private members' bills are all *public bills* and in the process of legislation are so dealt with. Private bills, on the other hand, are based on petitions from the parties directly interested and go through a special procedure. Any bill, whether public or private, may be introduced either in the House of Commons or the House of Lords; the only exception being that money bills must originate in the Commons. As a matter of practice, however, the great majority of all measures originate in that House.

Government bills and private members' bills.

Most of the important measures laid before parliament are government bills, which means that much preliminary consideration is given to them by the cabinet. Important government bills are all cut and dried at Whitehall before being brought to Westminster. One of the ministers makes the first rough outline of a bill, stating only the main principles. This he lays before the cabinet for discussion. If the principles are agreed to, he then hands his outline to an expert draftsman for elaboration into a finished measure, with sections, subsections, and paragraphs. Thereupon the cabinet gives it a final look-over and the bill is ready to be introduced.

How public bills are prepared.

The introduction of every bill is preceded by a notice, printed in the Orders of the Day. Then, when the time comes, the bill is handed to the clerk of the House, who reads its title aloud. Sometimes the bill is not in finished form when the time for its introduction arrives. In that case the clerk is given a dummy bill with nothing but the title written down. In any event the House, without debate or discussion, accepts this "first reading," and orders the bill to be printed, thus placing it in line for a "second

Introduction and first reading.

¹ No money bill can be introduced unless a previous resolution of the House in Committee of Ways and Means has been passed declaring the expediency of incurring certain expenditures or of imposing certain taxes. No such resolution can be moved except by a minister of the crown. The same is true of every bill which, though not in form a money bill, involves in fact a charge on the public funds.

reading." The measure must then wait its turn. If the measure be a government bill of great importance, however, the minister in charge of it usually gives the House a brief summary of its provisions when it is introduced.¹

The second reading and reference to committees.

In due course the bill is again reached by the House, and its sponsor moves that it be "read a second time." This second reading gives opportunity for a debate on the principles of the bill. Discussions of individual provisions are out of order, and amendments which merely aim to alter the phraseology of the bill are not considered at this stage. The question is whether the House desires legislation of the proposed type at all. If the opposition desires to test its strength with the ministry, here is the opportunity to do it. It may move that the bill be given its second reading "this day six months," which would put it over to a date when the House is not in session, and hence is equivalent to an indefinite postponement. Or it may offer some resolution which is hostile to the general tenor of the bill. Long debates often mark this stage in the progress of important measures—debates which extend over several days. Such debates are usually followed by a vote (a "division," it is called in England) which determines whether the House approves or disapproves the principles of the bill. In the case of a government measure a defeat at this stage expresses a lack of confidence in the ministry and under normal conditions compels it to resign. Only on the rarest occasions, however, has a government measure been refused a second reading.

The committee stage.

Having passed its second reading the bill enters the *committee stage*. It is referred to a committee for the consideration of its detailed provisions. Ordinarily every public bill (except a money bill) goes to one of the standing committees; but in exceptional cases, the House sometimes orders it to a select committee.² If the measure be a money bill, it goes to the Committee of the Whole House immediately after its second reading. Moreover, the House may at any time and for any reason order a non-financial measure referred to the Committee of the Whole House, but this is seldom done.

¹ It sometimes happens, moreover, that the minister in charge of an important bill will "ask leave to introduce it." This provides him with an opportunity to make an extended speech on the measure and for a general debate to arise.

² The reference of a public bill to a select committee is very uncommon, and it is usually for the purpose of examining some new principle which has been embodied in the bill. In 1923, for example, a bill providing for the equal guardianship of children by husband and wife was referred to a select committee representing both Houses.

The organization of these various committees has already been explained.¹ Every measure sooner or later reaches the House from a standing committee, a select committee, or from the Committee of the Whole House. Then it enters the *report stage*, being laid before the House in amended and reprinted form. Bills may come back from committees and be given their third reading forthwith, but important measures rarely have any such good fortune. If amendments have been made in committee, these may be debated during the report stage, and alternative amendments offered. All the old questions which were threshed out at the second reading may be debated over again—and in the case of a controversial measure they usually are. At the close of this debate the measure is ready for its third reading. In connection with the third reading of a bill no amendments are in order. If it is desired to change the substance or phraseology of a clause, even slightly, the bill must go back to committee. The House must now accept or reject the bill as it stands. Rejections at the third reading are not common. Here ends the action of the Commons and the bill goes to the House of Lords for concurrence.

The report stage.

The third reading.

British parliamentary procedure is based upon the theory that the initiative, as respects all public measures, belongs to the cabinet and that government measures ought to have the right of way. Hence, although public bills may be introduced by private members they have relatively little chance of passage or even of prolonged discussion. This is because most of the daily sittings of the House are reserved for government measures and only a few are available for the consideration of private members' bills.² Even these sittings, moreover, are taken over by the ministry for government bills when the pressure of business becomes heavy. Nevertheless, private members sponsor a great many public bills, and as there is no chance of considering them all, the rules of the House provide that a selection from the entire grist shall be made by lot. At an appointed hour, therefore, those private members who desire to introduce public bills are required to put their cards in a box at the clerk's table, and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to intro-

The theory of British parliamentary procedure.

Private members' bills.

¹ See pp. 175-178.

² From the opening of parliament to the Easter recess, private members have every Friday, also Tuesday and Wednesday evenings from 8:15 to 11 P.M. After Easter they lose Tuesday evening; after Whitsuntide they lose Wednesday evenings and some of the Fridays.

duce his bill on the first Friday of the session; the second member gets the second Friday, and so on till the Fridays of the session are exhausted—twelve or fifteen of them in all.

They have little chance of enactment.

Having had the good fortune to get his bill on the Orders in this way, the private member moves that it be read a first time and secures it a second reading; it then goes to one of the standing committees, and follows the same procedure as other public bills. "If a member is lucky in this lottery and can introduce a bill which is generally popular, and which neither the ministers nor any of his fellow members dislike, and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session."¹ But few members can hope to run this gauntlet successfully and although scores of private members' bills are prepared on the eve of each session it is unusual for more than a half dozen of them to gain places on the statute book before parliament is prorogued or dissolved.

Private bill procedure.

So much for public bills, whether introduced by the ministry or by private members. All other bills are known as private bills. The distinction between private members' bills and private bills is important, and the two should not be confused. Most private bills are bills introduced by municipalities or corporations asking for special powers. English municipalities have a broad range of powers laid down by general law, but from time to time they desire special powers in addition. These powers they seek, in many instances, by means of private bills. Every year parliament gives special powers to individual cities (boroughs) in this way. A highly advantageous arrangement this is deemed to be, for it gives flexibility to the system of local government and enables parliament to give one municipality additional powers as an experiment without committing itself to the same policy for all.

The essential preliminaries.

These private bills are presented to parliament in a different way and do not follow the same procedure as public bills. They are presented in the form of petitions with the bills attached. They cannot be introduced by merely giving notice on the order paper but must first go before two parliamentary officials (one from each House) known as the Examiners of Petitions for Private Bills. Every petition for a private bill must be preceded by certain published notices, the object of which is to inform those whose private interests may be affected by the bill. Copies must also be sent in

¹ C. F. G. Masterman, *How England is Governed* (New York, 1922), p. 248.

advance to the government departments concerned—to the board of trade in the case of a private bill incorporating a gas company, for example, or to the ministry of transport in the case of a bill authorizing the taking of land for a street railway. If the Examiners find that there has been full compliance with the requirements, they so certify, and the bill may then be presented in either House.

On introduction, all private bills are read a first time and ordered to be read a second time. After second reading, if there is no opposition, they are customarily referred to a committee on unopposed bills. If there is opposition a bill goes to one of the private bills committees. These are small committees of disinterested members, who are appointed by the committee of selection from lists prepared by the party whips. Each committee on private bills consists of four members in the Commons. In the House of Lords each private bills committee has five members. The chairman has a casting vote and three members form a quorum. A private bills committee may be named to consider a single bill, but more often every such committee gets a group of similar measures. Before going on a private bills committee, however, each member must sign a declaration that he has no personal interest, and that his constituents have no local interest, in the measures to be considered.

The special committees on private bills.

The private bills committees, each in its own committee room, give hearings to all who have a definite interest in the bills, whether for or against. Every private bill begins with a preamble setting forth the object of the bill. The committee first hears evidence and arguments on the question whether the object is desirable. Then it decides that the preamble is proved or not proved. If the latter, the bill drops; if the former, the committee then proceeds with hearings on the clauses of the bill. These hearings are of the nature of fair and thorough investigations; they are conducted by paid counsel on both sides, with testimony as in a court of law and arguments at the close. They differ from the legislative committee hearings with which Americans are familiar in that none but persons who have a *locus standi*, in other words a demonstrable interest in the bill, are permitted to give testimony before the committee.

Hearings on private bills.

The private bills committee in examining the bill and the evidence also has at its disposal a report from the ministry of health, the board of trade, the ministry of transport, or the other central

Advice from the executive departments.

department which is most immediately concerned. In this way it can make sure that a bill does not conflict with the general policy of the government or create an undesirable precedent. But it cannot be too strongly emphasized that the work of a private bills committee, while legislative in form, is largely adjudicatory in fact, hence it is done in accordance with a procedure which is quasi-judicial. Party politics have no place in the consideration of private bills.

The action
of the
House.

When a private bills committee has reached its decision it reports each measure, favorably or unfavorably, with or without amendments, to the House which its members represent. The committee's report on the bill is almost invariably accepted, although there is no question as to the right of either House to reject a report on a private bill if it chooses to do so. But the members know that the committee has been impartially constituted, that it has given both sides a fair hearing, and that it has consulted the experts. Occasionally, however, a private bill raises some issue of general policy, reaching far beyond the question immediately covered, and then the House may divide on the committee's report. But as a rule it accepts the committee's recommendation without discussion, and thereafter the private bill takes the same course as a public bill.

Merits of
the plan.

This method of dealing with private bills has two outstanding merits. It insures the careful, nonpartisan, consideration of measures which, from their nature, ought not to be dealt with in a partisan spirit. It saves the time of both chambers. The procedure rests upon the common-sense principle that the time and patience of several hundred legislators should not be consumed, hour after hour, in discussing whether the borough of Battersea should have a new cemetery or the Liverpool Corporation Tramways build two hundred yards of trackage outside the city limits. In Congress, where general and special bills are dealt with in the same way, there is a terrific congestion of business. Measures which are in effect private bills come before it by the thousands. They are brought in by individual members. One proposes a pension for somebody, another a new post office somewhere, another a favor for someone else. No matter how trivial their importance these bills are all referred to some committee which may have many important measures of nation-wide interest under consideration. The result is that most of the minor bills obtain very little scrutiny,

and unless some influential members of Congress get behind them they are asphyxiated in committee. Many of them, no doubt, richly deserve this fate but unhappily it is not the meritorious ones that survive. The worthiness of a minor bill in Congress has little to do with its getting a favorable committee report. The main thing is the amount of influence that the congressman who fathered it can exert.

In American state legislatures the situation is even worse. They hold to the fiction that all bills are created free and equal, and hence must go through the same procedure, although it is plain as print that some measures are of concern to everybody while others have no interest except to the few people who are promoting them. What general interest, for example, can a body of two hundred state legislators have in a bill to permit some small city to increase the salary of its assessor, or to enable a gas company to change its capital structure, or to let somebody erect a building above the established height limit? Might it not be better to discard the fiction that all bills are of equal importance and to accept frankly, as parliament has done, the principle that many measures are of purely local importance, and to provide that all such bills be dealt with by small disinterested committees in a wholly non-partisan way? "The curse of most representative bodies," it has been said, "is the tendency of members to urge the interests of their localities or constituents. It is this more than anything else which has brought legislatures into discredit and has made them appear to be concerned with a tangled skein of private interests rather than with the public welfare. . . . Now the very essence of the English system lies in the fact that it tends to remove private and local bills from the general field of political discussion and this helps to rivet the attention of Parliament upon public matters." ¹

Might
America
profit by it?

On the other hand, the English system of private bills procedure has the defect of being expensive. Witnesses must be brought to London, sometimes many of them. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary, when the bill is opposed, to employ parliamentary counsel or agents who exact substantial retainers. These parliamentary agents are professional law promoters; they are specialists in their work, and almost with-

Defects of
the British
private bill
procedure.

¹ A. L. Lowell, *Government of England* (New York, 1909), Vol. I, pp. 391-392.

out exception they are lawyers of high standing.¹ But any person may become a parliamentary agent by registering as such and filing a bond. London has lots of them, and the best ones charge high fees for their services. They are not lobbyists in the American sense; their business is not to roam the corridors buttonholing members. They merely supervise the drafting of a private bill, see that the required notices are given, present the evidence to the committees, and make their arguments.

The system
of "orders."

Provisional
orders.

How it
operates.

The quest for private or special acts of parliament has been considerably slackened by the use of "orders." These orders are issued by a central department and become effective either automatically or when confirmed by parliament.² In the latter case they are known as "provisional orders." The reason for the issuance of these orders is that many general laws which have been passed by parliament (such as the Public Health Acts and the various acts relating to railways, street railways, public lighting, poor relief, and education), authorize the various government departments, such as the ministry of health, the board of trade, or the home office, to grant certain powers whenever proper cause for such action can be shown. When, therefore, a power not already conferred by law is desired by some municipality, corporation, or individual, an application is made to whichever department has jurisdiction in the matter.

For example, an application for authority to finance a hospital by the issue of municipal bonds goes to the ministry of health. The ministry, through its administrative officers, thereupon inquires into the merits of the application, and if it decides that the permission ought to be granted, an order is issued conferring the

¹ There are two grades of lawyers in England—solicitors and barristers. The solicitor deals directly with the client; the barrister (when one is employed) is retained by the solicitor to appear in court, except in the minor courts where the solicitor may himself appear. In the case of private bills a solicitor prepares the case and may present it before the committee except in certain cases where the presentation of the case must be handled by a barrister.

² There are, in all, no fewer than six classes of orders, viz: (1) orders made by a central department which become effective when made and do not require any reference to parliament; (2) orders which become effective when made but have to be laid before parliament; (3) orders which have to be laid before both Houses for forty days before they become effective, during which time, of course, they may be objected to in either House; (4) orders which do not become effective unless confirmed by resolution of both Houses; (5) orders which may become effective unless some authorized outside body objects, in which case they become provisional orders; and, finally, (6) orders which are provisional in every case, objection or no objection, and do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by parliament.

power desired. This order, as has been said, may be a provisional order, in which case it requires for its validity the subsequent ratification of parliament. The usual practice is to lump several provisional orders into a confirmation bill, and in that form they are presented for enactment into law. It is less expensive to obtain authority in this way than by introducing a private bill, hence the practice of applying for "orders" has become increasingly popular in recent years.¹

It has sometimes been suggested that Congress, and the state legislatures as well, might unburden themselves in this way from the great pressure now placed upon them. They might authorize the various executive departments (such as the department of commerce in the national government, or the department of education, or of public utilities in the state governments) to issue provisional orders which would have the force of law when confirmed by legislative enactments. But the American scheme of government by checks and balances does not lend itself readily to any such procedure. In Great Britain an executive department, being assured that there is a legislative majority behind it, can usually count upon the confirmation of its acts. In the United States there would be no assurance of such confirmation. The majority in Congress, or in a state legislature, is often hostile to the executive; and even when the two branches of government represent the same political party they do not always work in coöperation. Certainty of confirmation (save in very exceptional instances) is the feature which makes the English plan workable and no such certainty could be hoped for in America. To some extent in recent years, however, American legislatures have been giving to various administrative authorities and boards the right to issue orders having virtually the force of law—without the necessity of confirmation. The order-issuing powers given to the interstate commerce commission and to public utilities commissions in the various states are good examples.²

Having explained, in a general way, the various steps through which a bill passes on its way through the House of Commons—five steps in all³—it is now possible to compare the essential

The plan would not be practicable in the United States.

British and American procedure compared:

¹ In addition to the granting of orders the various central departments give authorizations dealing with matters of routine in a less formal way.

² The flexible provision in the Tariff Act of 1930 is another.

³ To wit: introduction and first reading, second reading, committee consideration, report stage, and third reading.

1. The absence of provision for formal executive leadership in America.

2. Introduction of public measures.

features of English and American legislative procedure. Fundamentally they are alike, but there are some sharp contrasts between the two. In Congress, as has been said, there is no distinction among bills. All of them are public bills introduced by private members. It is true, of course, that some measures are inspired by the President or by members of his cabinet. Many notable illustrations of this were afforded during President Wilson's administration—for example, the Federal Reserve Act, the Adamson Law, and the National Defence Act. But measures are never laid before Congress by a member of the President's cabinet or in the name of his administration. To introduce a measure in this way would be more apt to encompass its defeat than its enactment. It is not so in the House of Commons, for there the members of the majority party are faced with the awkward fact that a vote against any government measure is a vote to turn their own ministers out of power and put their opponents in. This makes them far more amenable to the crack of the party whip. The American congressman, when he votes against some measure which the administration is known to support, knows full well that nothing catastrophic will happen. His party will not go out of power, if it is in power; it will continue in office to the end of its prescribed term, even though it were turned down by the House of Representatives on one measure after another.

Any member in either chamber of Congress may introduce any bill, save that money bills must originate in the House of Representatives. But measures of comprehensive scope and great importance, including those which correspond to government measures in Great Britain, are usually laid before Congress by the chairman of the committee to which such bills would naturally be referred, and hence become designated by the chairman's name. That is why we speak of the Sherman Law, the Mann Act, the Adamson Law, the Jones Act, the Rogers Act, the Harrison Law, the Volstead Law, and so forth. A measure for the further regulation of the railroads would ordinarily be brought in by the chairman of the committee on interstate commerce, a proposal to provide federal subsidies for elementary education would be introduced by the chairman of the committee on education. In a limited sense, therefore, the chairmen of committees in Congress assume the functions of initiative and guidance which members of the ministry are accustomed to exercise in parliament. Although they

are not heads of administrative departments they are usually in close touch with the departments concerned, and are provided with all the data they may require. Expert draftsmen are also used by Congress in the preparation of measures although not to the same extent as in England.

In Congress, again, all bills are referred to committees before there is any discussion of their principles or general merits. In one respect this is an advantage, in another a defect. It gives the committees more freedom in overhauling a bill and changing its substance. On the other hand, it means that a committee must do its work without having first ascertained the attitude of the House toward the measure as a whole. Hence it sometimes happens that congressional committeemen will spend several weeks in perfecting the details of a bill which is then rejected by the whole house on its general merits or lack of merits. The excellence of the work done by the English parliamentary committees is due, in part at least, to a feeling of reasonable certainty that their labor will not be in vain. For they work on no public bill until after the House has accepted it in principle.

The chairmen of committees in the House of Commons, on the other hand, do not obtain the prominence or the publicity that is given to the chairmen of important committees at Washington. They do not figure so prominently in the debates. On the floor of the House they are quite overshadowed by the ministers who take personal charge of all government measures. Their names are not tacked to bills and thus displayed in the newspaper headlines. There is still another difference: the chairman of a parliamentary committee (like the speaker of the House) is deemed to be absolutely impartial. He presides, and maintains decorum in his committee room, but he does not take sides. The chairman of a congressional committee has no such reticence. He is a power in his committee and sometimes dominates it. He has no hesitation in working openly in behalf of a measure which his committee is considering, or in working openly against it. Finally, there is a lively competition for places on the more important committees at Washington; at Westminster there is very little.

The use of the "question hour" in the House of Commons points to still another important procedural difference. When a congressman desires information from one of the executive departments he telephones or writes for it, and if he does not obtain it in that

3. A difference in committee work.

4. Chairmen of committees in the two countries compared.

5. The system of questioning the ministers.

way he may offer a resolution requesting it. But he is not allowed to consume the time of the whole House in pelting questions at the administration. The administration in Washington cannot be questioned on the floor, for nobody officially represents it there. Some chairman of a committee, or some other congressman, may constitute himself a spokesman for the President and may rise in his defense when an attack is made; but he does so in an unofficial capacity. In parliament, as has been pointed out, there is a regular time for asking questions and for answering them from the floor.

6. Yielding
the floor.

There are two practices in the American House of Representatives which the House of Commons has thus far avoided. One is the custom of requesting a member to yield the floor when he is in the middle of his speech. This is done at almost every sitting in Washington, and although the member who has the floor may decline to yield it he usually complies as a matter of courtesy. In this way a debate on a general question is often turned into a personal or sectional fracas. This custom of yielding the floor is unknown in the House of Commons. In that body, when a member rises to speak he may be interrupted at times by cries of "Hear, hear" or "No, no" from the opposing benches, but other members do not cut in upon him until he is through. The continuity of the debate is in this way preserved.

7. Granting
leave to
print.

Then there is the "leave to print" arrangement. It has no place among the usages of parliament. The only way in which a member of the House of Commons can have a speech printed at the public expense is to deliver it. But in Congress many undelivered speeches are printed, session after session. A congressman speaks for five or ten minutes and then moves that he be given leave to "extend his remarks" in print. Nobody objects, as a rule, for as a choice of evils it is preferable to have him print a long speech rather than listen to him. In some cases a congressman obtains leave to print, in the *Congressional Record*, a speech no portion of which has been delivered at all. Sometimes the printed text is literally interspersed with "Applause," "Laughter," etc. Copies are then struck off by the thousand and franked through the mails to voters in the congressman's district—to show them what an accomplished orator their representative is. The English voter has been spared this inflection.

Much has been written about the concentration of party responsibility in England and the fidelity with which party pledges are

redeemed. A British political party, when it makes a promise to the people, is enabled by the organization and procedure of parliament to fulfill this promise. If it triumphs at the polls, it controls both the executive and legislative branches of government. The cabinet then proceeds to crystallize the party's promises into government measures with the assurance that these measures will be enacted into law. But in America the organization and procedure of the government does not so readily lend itself to the redemption of party pledges. Candidates for the presidency make all sorts of promises, express and implied, during the election campaign. But without the coöperation of Congress there is no way in which these promises can be carried out. Senators and representatives also make pledges, but unless the administration is ready to help in fulfilling them they go mostly unredeemed. The same is true in state government.

Party responsibility as a feature in the two countries.

Party programs are, therefore, a much less accurate forecast of future legislation in America than in England. Party pledges are more frequently disregarded here than there. English parliamentary procedure is based upon the principle that the dominant political party, through its majority in the House of Commons and under the leadership of the ministry, is definitely responsible for the fulfillment of its program. No checks and balances stand in its way. It cannot avoid, evade, make excuses, or blame some branch of the government. That is the theory of lawmaking in England and the practice of it runs close to the design.

The redemption of party pledges.

But this system has the defects of its qualities. It is hard on the private member, especially on the "back-bencher" who is not prominent in the councils of his party. His power to initiate legislation, although supposed to be unlimited except as respects money bills, is in reality very small. It amounts to much less than that of the individual congressman. He can bring in a private member's bill but his chances of getting it considered, much less those of having it passed, are exceedingly slim. The standing orders, the traditions of the House, even the theory of ministerial responsibility are all against him. True enough, he may suggest amendments to government measures when they are in the committee stage, hence a minister who desires to get his measures through without amendments must do what he can to conciliate the back benches. Occasionally a private member, by reason of his special knowledge concerning the matter in hand, may

Some defects of the English system.

become an influential factor on the floor; but such cases are exceptional.

A too-powerful cabinet.

In a word the cabinet is responsible for initiating virtually all important measures and for steering them safely through both chambers. At every session it presents a sizeable grist of bills and these have the right of way. There is very little time for anything else. If individual members get in the way the cabinet rolls over them with its loyal majority. It is one of the agreeable fictions of British government that the Commons controls the cabinet; but an assertion that the cabinet controls the Commons would come closer to the grim actualities. The cabinet with a majority behind it, according to Ramsay Muir, is a "dictatorship qualified by publicity."¹ This is perhaps too strong a statement, but in the process of lawmaking the power of the cabinet is very great.

Limitations on debate:

1. In the American House of Representatives.

Both the House of Commons and the House of Representatives have devised ways of bringing a debate to a close and preventing obstruction by the minority. More than eighty years ago the House of Representatives adopted a rule that no congressman might speak for longer than one hour except by unanimous consent, and about the same time it was agreed to amend the rule relating to the previous question so that it might be used more effectively in shutting off debate.² A motion that "the previous question be now put" may be made by any congressman and if the motion prevails, with a quorum present, the vote on the main question must be taken forthwith. A motion that any matter may be laid on the table is also in order, and with a few restrictions may be offered at any time. It must be voted on without debate, and when carried it tables not only the amendment under discussion but all other amendments and the main question as well.³ A more common and less drastic method of shutting off discussion in the House of Representatives is by an advance agreement as to the time at which the debate shall be brought to a close. The committee on rules, after consulting the leaders on both sides, recommends a time limit and the House accepts it. Then, when the time limit is reached, the speaker brings down his gavel and the vote is taken.

¹ *How Britain is Governed* (New York, 1930), p. 89.

² The "previous question" rule, in its original form, was first adopted by the House of Commons in 1604. It was put into the first set of rules adopted by the House of Representatives in 1789.

³ Robert Luce, *Legislative Procedure* (Boston, 1923) p. 276.

In the House of Commons the rule relating to the previous question was devised and adopted more than three hundred years ago. But in its original form this rule did not accomplish much, as was shown during the debates on Irish questions, so the obstructionist tactics of the opposition led ultimately to the adoption of the *closure*, as it is called. This is substantially the previous question rule as followed in the House of Representatives except that the speaker of the House of Commons may refuse to put the motion if he believes it unfair to the minority; a power which the speaker at Washington does not have. But even this did not put an end to obstruction where the clauses of a long bill were being taken up one by one in Committee of the Whole House. The previous question had to be invoked on every clause. So the House of Commons devised another weapon for handling obstruction. This is the process known as closure by compartments—which is the application of the previous question to a whole group of clauses in a bill. Somebody moves, for example, that clauses seventeen to twenty-three “stand part of the bill.” Then, if the speaker approves, and a majority agrees, the debate on these clauses is at an end. A variation of this is known as the “kangaroo closure,” an arrangement which permits the speaker and the chairman of the Committee of the Whole House in Ways and Means to select amendments for discussion out of those which appear on the order paper and to pass over the rest. The chairman of a standing committee does not have this power. In the hands of an impartial speaker or chairman this is a valuable arrangement for expediting business.

2. In the House of Commons.

The closure.

Closure by compartments.

The “kangaroo closure.”

By majority vote the House may also fix a time limit for the consideration of the various clauses of a bill. Then the guillotine falls at the expiration of the allotted period whether all the clauses have been discussed or not. But the guillotine is not frequently used; it has not been brought into play except on one occasion during the past ten years. The practice now is to make a time-table when an important controversial measure comes up. The minister in charge of the bill asks the House to approve a resolution allotting so many days to the second reading, to the committee stage, to the report stage, and so on. The time-table may even assign specified hours to individual clauses.

The time-table.

It will be noted, therefore, that although the nomenclature is different, the methods of expediting measures actually employed

Conclusion.

by these two great English-speaking legislatures are essentially alike. The closure, in all its forms, is a crude and arbitrary process which ought not to be used except as a last resort. Far better it is, as both Houses have learned, to agree in advance on an apportionment of time which will give both supporters and opponents a fair opportunity to be heard, which will ensure consideration of the important clauses in a bill, but which will none the less prevent the throwing of sand in the gears. Rules of procedure in legislative bodies exist for two purposes—first, to guard against hasty and ill-considered lawmaking; second to expedite business. The problem is to find rules that will achieve both these ends.

The decline
of oratory.

The use of time limits and time-tables has had one noticeable result at Washington and at Westminster alike. It has brought the golden age of legislative oratory to an end. The days of Pitt and Fox, and Webster and Clay, seem gone forever. When only a few hours are available for the discussion of a bill, no member can monopolize the whole time for a set oration such as these old-time thunderers delivered in their day. The debater who desires to avoid unpopularity with his fellow members, several of whom are sitting on tenterhooks awaiting their turn, must make his deliverance to the point. Hence it is said that while the seventeenth-century members quoted long passages from the scriptures, and those of the next two centuries regaled the House with equally long excerpts from the Greek and Latin classics, the twentieth century M.P. "quotes from nothing at all and is quick about it." In Congress they give a prosy member leave to print; in the House of Commons they pursue the less expensive plan of flocking out of the chamber and leaving him to cast his pearls of rhetoric at the empty benches. Incidentally it is an unwritten rule of the Commons that a member may not read his speech from manuscript, although the use of notes is permitted.

Due to
other
factors than
time limits.

This is not to imply, however, that time limits and time-tables are alone responsible for the decline of parliamentary and congressional oratory. The decline had begun before these limitations came in. Long orations are not in accord with the spirit of the age in which we live. A speech of three or four hours' duration would clear the floor in the legislative halls of any country to-day. And the tension upon a speech-maker, who has to hold the attention of restless members for a prolonged discourse, has also become far greater than it used to be. The longest speech in the House of

Commons since the incoming of the twentieth century was Lloyd George's famous budget speech of 1909. It took him less than three hours to deliver, but he became exhausted before the end and the House accorded him the courtesy of adjournment for a short period in order that he might regain strength to finish it. The fact is that the whole tempo of life has been speeded up nowadays. Time was, when Edward Gibbon could write five volumes on the decline and fall of the Roman empire, and get millions to read them; but the Roman empire has got to decline and fall in five pages nowadays in order to secure any such quota of readers. The age in which we live is impatient of anything that does not come in well-condensed form. It insists that orators provide themselves with terminal facilities.

In tones of regret some people talk of the decline of oratory, on both sides of the Atlantic. They tell us that eloquence has been laid to rest in the churchyards. But it may well be doubted whether there is much reason to mourn its demise. If legislators perorate less nowadays, it may be that they put more thought into their speeches. If there is less eloquence, there is undoubtedly more meaning to what the debaters say. Many of the classic orations embodied an astonishing paucity of ideas. They were a series of purple patches, an array of high-pressure platitudes. Take down a volume of Gladstone's speeches, or of Daniel Webster's. The ponderous periods will make you wonder how such utterances could ever have stirred the souls of men. *Hansard* and the *Congressional Record* now make dull reading, but they are as light literature compared to the volumes of "great orations" which cumber our library shelves. The world has grown tired of grandiloquence. Three-hour orations, like the three-column newspaper editorial and the three-volume novel, are in total eclipse. There is no need to weep over their passing.

The standard work on English parliamentary procedure is Sir Thomas Erskine May's *Law, Privileges, Proceedings and Usages of Parliament*, a work which is now in its thirteenth edition (3 vols., London, 1927). The *Standing Orders of the House of Commons* are printed in this work. Mention should also be made of Josef Redlich's *Procedure of the House of Commons* (3 vols., London, 1908); Sir Courtney Ilbert's *Parliament: Its History, Constitution and Practice* (London, 1911); the same author's

Mechanics of Lawmaking; and his smaller *Manual of Procedure in the Public Business of the House of Commons* (London, 1908). The latest book on the subject is G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929). For analogies and contrasts, reference may be made to D. S. Alexander, *History and Procedure of the House of Representatives* (Boston, 1916); and to Robert Luce, *Legislative Procedure* (Boston, 1922). In a more recent and smaller book entitled *Congress: an Explanation* (Cambridge, 1926), the same author deals with the committee system in Congress.

CHAPTER XI

ODD WAYS AT WESTMINSTER

The House of Commons needs to be impressive, and impressive it is. The way to preserve old customs is to enjoy them.—*Walter Bagehot.*

The House of Commons is not only an impressive body, but picturesque also, which is because it retains so many ancient customs and curiosities of procedure. Most of these go back several centuries; their exact origin is sometimes so much in doubt that even the most diligent antiquarians have been unable to explain how they first came into existence. A few of them are clearly the heritage of mediæval days when the House was made up of barons by writ and knights of the shire. At any rate the world of men is influenced, more than most of us realize, by symbols and forms and rituals. Especially so when these carry far back into the past. In government, as in art, it is not amiss to make appeals to the imagination. The Philistine looks upon old customs as bric-a-brac which ought to be thrown away and replaced by things more up to date. But age, and the evidences of age (which old customs are) give dignity and draw reverence. The House of Commons, as the oldest representative chamber on earth, appropriately maintains an atmosphere more redolent of age than that which surrounds the making of laws in any other country. Its glamour is not a "barbaric pomp," as Richard Cobden once called it.

Some ancient customs and symbols.

The oddest thing about the House of Commons is its meeting place. This chamber is unique. Legislative halls in all other countries are so planned that every member can have a seat and can sit with his face to the presiding officer. But in the House of Commons there are benches for less than two-thirds of the members. And those who occupy them do not face the speaker of the House; they face their opponents. New members sometimes do not realize that no individual seats are assigned and there are current stories of neophyte commoners making early application to the clerk in the hope of getting well placed. A first glance around the chamber gives the impression of a chapel or a huge choir stall. The subdued

A unique chamber.

light which falls from overhead throws a mellowness over the place. There is an air of dignity, leisure, and comfort intermingled with venerableness—all of which is in sharp contrast with the bustling auditorium where the House of Representatives semicircles around its speaker.

Searching
the House.

On the morning of the day when a new parliament assembles, a quaint ceremony is gone through. In the early hours of this opening day a detachment of twelve yeomen of the guard from the Tower of London marches to Westminster. These yeomen are colloquially known as "beefeaters," which is said to be a corruption of the French *buffetier*. They come, in the picturesque glory of their Tudor regalia, each carrying a lighted lantern of the pattern of 1600. Accompanied by the lord great chamberlain, who is the custodian of the palace, they trudge through the legislative chambers and down into the rooms and caverns below, into every corner of the stately pile. In and out among the coal bins and furnaces, the gas pipes and the steam pipes, the wine cellars and the rubbish rooms they go—every yeomen keeping step, his eyes to the front. With their eyes to the front they are looking for kegs of gunpowder placed in some out-of-the-way corner by the enemies of the king!

Origin of
this prac-
tice.

This ceremony of searching the Houses has been gone through at the opening of every new parliament for centuries. Back in the days of James I, a certain Guy Fawkes, a young Englishman who had served in the Spanish army, was hired by some conspirators to blow up the old House of Parliament. Fawkes succeeded in placing twenty kegs of gunpowder in the basement of the building, all carefully covered with kindling wood. When parliament assembled, with the king in attendance, the gunpowder was to be touched off. But too many people were let into the secret; somebody told the authorities, and Fawkes was seized in the cellar (with the key to the place in his pocket) on the morning of explosion day (November 5, 1605).¹ Some time later it was ordained, as a precaution against the machinations of any future Fawkes, that the whole place should be searched at intervals, and to this day the quaint formality

¹ For more than two centuries after 1605 every fifth of November was celebrated as a public holiday in England, a day of rejoicing known as Guy Fawkes Day. Even yet it is an occasion of some festivity. There is a well-known ditty:

Remember, remember, the fifth of November,
The gunpowder treason and plot;
For I know no good reason why the gunpowder treason
Should ever by us be forgot.

As for the key which was found on Fawkes, it is still on exhibition at Westminster.

continues. Parliament has built itself a new abode since 1605, and there are now no unlighted caverns underneath. But the yeomen of the guard continue to make their rounds. Every inch of the palace is now brilliantly lighted by electricity; but the yeomen still carry their flickering lanterns. When they have searched through the miles of rooms and corridors they send a report to the royal palace that "All's well" and are then regaled, as of yore, with a repast of cakes and ale, ending with a toast to the king.

The House opens its daily sittings with the entrance of the speaker's procession. That dignitary marches down the great aisle accompanied by the chaplain in surplice and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. Then comes the reading of a psalm and a prayer by the chaplain. It is always the 67th Psalm. . . . "Oh, let the nations be glad and sing for joy, for Thou shalt judge the people righteously and govern the nations upon earth. . . . Then shall the earth yield her increase; and God, even our own God, shall bless us." As a rule there are very few members in the chamber when these prayers are being read, and visitors are not allowed in the galleries until after the chaplain has finished. This rule, no doubt, was born in the days when religious bitterness was rife—when the reading of prayers from a prayer book might have been made the occasion of disorders on the part of Nonconformists. Members of the House face the center aisle during the reading of the psalm and then turn their faces to the wall when the prayer is being read. The origin of this curious custom nobody seems to know.¹ During prayers, by the way, the Treasury bench is always empty. It is not that members of the cabinet have less need for the chaplain's intercession than the rank and file of the Commons, but merely that they do not need to come early in order to reserve their seats.²

Prayers being over, the doorkeeper shouts "Mr. Speaker at the Chair." The cry is taken up through the lobbies and corridors, thus warning the loitering members that the day's sitting has begun. The mace is in full view on the table just below the speaker. This indicates that the House is sitting as a House, not in Committee of the Whole House. When the House goes into committee

¹ It has been suggested to me by one excellent authority on the usages of the House that in the old days the members probably knelt at their benches during prayers and that the practice of turning their backs to the chaplain may have originated in this way.

² Michael MacDonagh, *The Pageant of Parliament*, Vol. I, p. 236.

the sergeant-at-arms takes the mace reverently from the table and sets it underneath, out of sight. When the House adjourns it is carried off with the outgoing speaker's procession. This mace, which figures so prominently in House procedure, is a wooden staff about five feet long, finely embellished in gold leaf. It is surmounted by a gilded crown, the symbol of royalty.

Its history
in England.

The use of the mace goes back to early mediæval days when the king attended parliament in person. Originally, as we have seen, it was his custom to be present at meetings of his great council, and later at meetings of the *parlementum*. When parliament divided into two Houses, the king attended sessions of the House of Lords only. If he had anything to say to the House of Commons he summoned the commoners to the House of Lords, as he still does at the opening of a new parliament. Then he instructed them to go to their own chamber and deliberate upon the matters which were within their province, especially the granting of money. But not having the royal presence with them, in their own chamber, the commoners appear to have desired some fiction or symbol of it, or at any rate some token of the fact that they were meeting by virtue of the royal command and under the king's protection. So this mechanical contrivance was devised at some uncertain date, a wooden staff with a crown on its head, and it has become known as the mace. No business is in order until the mace is placed on the table where it silently reposes till the House goes into committee or adjourns.

A Crom-
wellian epi-
sode.

There it has lain for at least five hundred years. Were it able to write an autobiography it could tell us a long and chequered tale. *Quorum pars fui*—it might say, for on one historic occasion the mace was itself expelled from the House. This was in 1653, when Oliver Cromwell became exasperated at the action of parliament in trying to prolong its own existence. With a squad of soldiers he hurried to Westminster, as Charles I had done, and ordered the members out of doors. Then his eye caught sight of the mace on the table. "Take away that bauble!" he bellowed, and the mace disappeared. But it was soon brought back again. The colonial assemblies of America, following the custom of the House of Commons, each provided itself with a mace, and the custom has been continued both by Congress and by the state legislatures. In the American House of Representatives the mace is a plain staff surmounted by the figure of an eagle. It is not laid on the clerk's

The mace in
Congress.

table but stands in a marble pedestal at the right hand of the speaker. When the House goes into Committee of the Whole it is removed from this pedestal, out of view; when the House adjourns it is taken away by the sergeant-at-arms. The mace, in the House of Representatives, is said to be the "symbol of authority," but how many congressmen know how and why this symbolism originated?

The table which is used by the clerks in the House of Commons and on which the mace reposes, is a massive piece of furniture occupying most of the space between the Treasury and Opposition benches. These two benches, as has been said, face each other from opposite sides of the main aisle, one at the speaker's right and the other at his left. On the table are piles of books and documents which the ministers and their opponents utilize in the course of their speeches. On it, also, are two brass-bound boxes, one at either side. It is the practice of those who sit on the Treasury or Opposition benches to use these boxes as their pulpits. They often set their notes thereon, and thump their fists on the oak receptacles to emphasize the salient points in their utterances. Mr. Gladstone, in the course of his long career, punished both of these boxes so relentlessly that the dents made by his signet ring are there to this day, bearing tribute to the *éclat* with which the great commoner drove home his arguments.

The table.

The Treasury bench, on the speaker's right, is occupied exclusively by those members of the ministry who are members of the House. If the number present exceeds the capacity of the bench, the senior ministers occupy it and the junior ministers find seats elsewhere on the government side of the House. But so long as there is room on the Treasury bench, the occupant of any ministerial post, however subordinate, has the right to a place on it, provided, of course, that he is a member of the House of Commons, which some ministers are not.¹ By an old parliamentary custom, moreover, the two members for the City of London are entitled to sit on this bench, but they never do it (unless they happen to be ministers) except on the first day of a new parliament. On that day they invariably sit there a few moments for the purpose of asserting their ancient right to do so,—and this even though they happen to be members of the opposition.

The treasury bench.

¹ That is, some of them are members of the House of Lords. Ministers are not permitted, as in France, to sit or speak in the chamber to which they do not belong. See chap. xxii.

The Opposition bench.

The Opposition bench is of equal capacity, but usage does not so precisely define who shall occupy it. In general, however, this bench is reserved for the leading members of the opposition—which is a rather plastic phrase. The leader of the opposition, as a matter of practice, virtually determines who shall sit alongside him on this bench, for no one would venture to go there uninvited. Some of his chief lieutenants are always at hand; others go to the Opposition bench when their presence is desired for consultation during a particular debate. The presence of three regular parties in the House during recent years has complicated the situation a bit. With the Labor party in office, and the Conservatives occupying the Opposition bench as the largest minority party in the House, where shall the Liberal leaders sit? Mr. Asquith, during 1922–1924 sometimes addressed the House from in front of the Opposition bench; Mr. Lloyd George, since the advent of the second Labor government in 1928, has been a law unto himself. He speaks from wherever he happens to be.

Apart from the honor involved, there is a certain advantage in sitting on one of these benches and in addressing the House from this location. It is the only place where a speaker has something to lean upon. It is, to the House of Commons, what the tribune is to continental chambers.¹ Rather curiously there is no place in the House of Commons where a member can stand and speak face to face with all his fellow members. At either of the front benches his back will be turned to a considerable portion of his audience. If he should go to the top back bench on either side he could then have the entire membership of the House in sight; but half the members would then have their backs turned to him. Fortunately the acoustic properties of the House are good and a speaker can usually be heard no matter where he stands.

The "official pew."

On the same level as the floor of the House, and to the right of the speaker's chair, there is a small gallery or enclosure. It is irreverently known as "the official pew." Here sit various permanent officials (not members of the House) who may be wanted by ministers during the debate. When some troublesome point is raised by an opposition speaker, the minister steps over to this enclosure and secures material for his reply. It is this practice that has given rise to the cynical assertion that the ministers are merely the spokesmen of their professional subordinates and that

¹ See chap. xxiv.

the House of Commons is in bondage to the higher ranks of the civil service.

Some eccentricities of procedure are associated with the head-gear of members. Visitors to the House of Commons are surprised to see some members sitting with their hats on. The practice of wearing hats in the House of Commons is said to be a survival from the days when barons and knights came to parliament in full armor, with helmets of steel that could not be removed. In all probability, however, the custom of hat-wearing had a less chivalrous origin, for members of the House of Lords do not habitually wear their hats during debates, although they are even more directly the descendants of the mediæval ironclads. The reason why the commoners wear their hats, while the lords do not, is simply because the House of Commons has never been provided with a convenient coatroom.¹ At any rate, the earliest engravings of parliament show the members wearing gowns and caps; then in the seventeenth century they appear hatless but with flowing capes and swords; in the eighteenth century they wore elaborate wigs for headgear, and it was not until the nineteenth that the hats appeared.²

The hat in the House.

But hat-wearing in the House of Commons is on the wane. The practice is now confined, for the most part, to the relatively few members who wear silk hats (or "toppers" as Englishmen call them), and this glossy headgear is rapidly going the way of all flesh. On the other hand the custom of wearing hats in the House of Lords seems to be more common to-day than it used to be. Sir Henry Lucy, not many years ago, spoke of it as "quite exceptional," but at the present time the visitor to the galleries will see as many hats on the heads of lords as on those of commoners.³

An old custom on the wane.

The etiquette which governs the hat in the House of Commons is well established and rigidly enforced. A member may wear his hat until he rises to speak or until he moves from one seat to another. Then he must uncover. (This rule has been waived for women members.) Even if he leans forward to whisper in the ear of the member in front of him he must remove his hat. On the

Headgear and etiquette.

¹ The present coatroom of the Commons is located a considerable distance from the chamber and hence is inconvenient to use. The lords, on the other hand, not only have a "robing-room" but there are liveried messengers in attendance to take and fetch their belongings.

² See the reproductions in A. F. Pollard, *The Evolution of Parliament* (London, 1920).

³ *Lords and Commoners*, p. 99.

other hand a member who desires to raise a point of order while a vote is being taken must speak sitting and must have his hat on. This usage has grown to be an inconvenient one and it is not now enforced. The lifting of the hat is also used as a signal to the presiding officer. It is in this way, for example, that the minister or member who is in charge of a bill moves its advancement to the next stage. When the debate seems to have died down, the speaker looks toward the minister who is in charge of the measure. The latter does not rise or speak a word; he merely lifts his hat and the speaker puts the question. The speaker also carries a three-cornered contrivance which is called a hat. He brings it with him into the House, sets it on the arm of his chair, and picks it up when he leaves. It is manifestly part of his official uniform, but it never goes on his head.¹

How seats
are re-
served.

It is an unwritten rule of the House that a member (other than one who sits on the front benches) may reserve any unoccupied seat by placing his hat on it. If, therefore, a private member goes out to the lobby, the library, the smoking room, the restaurant, or the terrace, he merely drops his hat on the bench where he has been sitting and departs with the assurance that he will find the place unoccupied when he returns. Due to the relatively small attendance when routine business is under consideration, there is not much occasion for members to reserve seats in this way; but on the opening day of a new session or when an important debate is scheduled, the quest for seats becomes lively. So a good many members (especially new members) go to the chamber some hours before the sitting begins and reserve seats for themselves by depositing their headgear in favorable locations. Those who do not take this precaution may have to find seats in the lower gallery (which is reserved as an overflow place for members) or may even have to stand during the proceedings.

An episode
of Irish
flavor.

This method of reserving seats has had its humors. Some years ago, when the Irish Nationalists were in the House, one of their number conceived the idea of reserving enough seats for the entire

¹ The lord chancellor, who presides in the House of Lords, has a similar "hat" but he wears it atop his wig on certain formal occasions. And speaking of curious official headgear, it may be mentioned that a judge of the High Court of England also produces a "black cap" (as it is called) and puts it on his head when sentencing a prisoner to death. It is merely part of his judicial regalia, though the wearing of it is now confined to this particular occasion of extreme seriousness. There is no historical basis for the popular impression that the cap and its blackness have some connection with the death sentence as such.

membership of his party, nearly a hundred in all. Hence in the grey dawn of the day on which a new parliament opened, he came to the House with a huge armful of hats and caps of varying sizes, shapes, and ages. One by one he deposited them at suitable intervals on the best benches of the chamber and when the House assembled he passed the word to his fellow Nationalists that all the good seats were theirs for the taking. But the Tory members did not appreciate the humor of this proceeding. They protested against such trifling with an ancient tradition. Whereupon the House ordered an investigation of the whole question of reserving seats, and it was finally agreed that for the future a seat should be reservable only by the use of a member's own hat, and not by using what is termed in theatrical parlance, a "property hat." Under the new regulations, moreover, a member may now reserve a seat by leaving his card on it.

The usage of the House is friendly to hats but unfriendly to swords. No member (with one exception) may bring into the House a sword, or anything that looks like a sword, not even a drawing-room rapier such as the sergeant-at-arms girds to his belt. This prohibition recalls the days when the gentlemen of England wore swords that were sharp. During a heated debate it was not uncommon for a quick-tempered knight to reach a hand to his sword-hilt.¹ His opponent across the aisle would sometimes meet the threat by doing likewise. There are several recorded instances of members drawing sabers and starting for each other, while friends on both sides intervened to avert a duel. So the House, in one of its irritable moments, decreed that a line be drawn, a thin red line, on the matting of the center aisle, about twenty-four inches from the lower benches on either side. Then it ordered that no member, in addressing the House, should step over this line.

The wearing
of swords.

This diminished the danger of jousts in the chamber, but members might still settle their differences by a duel in the lobby, so the House eventually forbade the wearing of swords altogether. So strict is the prohibition that when distinguished military or naval officers come to the Houses of Parliament they must unbuckle their weapons and leave them with the doorkeepers. The only exception to the rule is made in the case of the two members who move and second the address in reply to the speech from the

Exceptions
to the rule.

¹ The custom of wearing swords in the House continued until nearly the close of the eighteenth century.

throne.¹ In accordance with a custom that goes back to time immemorial, these two members may appear in court uniform, with swords and scabbards, but only for the day upon which the moving and seconding is done. And the knightly paraphernalia, even on this one occasion, sometimes becomes an embarrassing adjunct to their carefully-prepared speeches, by getting entangled with shaky legs at critical moments.²

The bar of
the House.

Prisoners at
the bar.

Just inside the swing-doors which guard the main entrance to the chamber is a sliding brass rail which can be used to close the center aisle. This is the "bar of the House" which figures so frequently in the annals of parliament. When the House orders anyone before it, he is escorted to this bar by the sergeant-at-arms or his deputy, and on many occasions some hapless offender against the dignity or privileges of the House has been haled there for judgment. In former days the prisoner at the bar was compelled to kneel while the speaker solemnly pronounced the censure of the House or even sentenced him to imprisonment. But in 1772 the custom of requiring prisoners to kneel was discontinued by an order which provided that future offenders should receive the speaker's judgment standing.³ Imprisonment has not been meted out by Mr. Speaker to anyone, member or non-member, for many years. The last occasion was in 1880 when Charles Bradlaugh, an atheist member-elect, raised a ruction because he was not permitted to take the oath of allegiance in his own way. In the Clock Tower there are still some detention rooms for the confinement of those whom the speaker penalizes.

Others who
have ap-
peared
there.

But it is not offenders alone who come to the bar of the House. Men of all ranks and reputations have stood there at various times to be questioned by the House, or to make statements, or to plead causes, and indeed on some occasions to receive the thanks of the House for their services to the nation. The gossipy Pepys, as readers of the *Diary* will recall, once came to the bar and successfully defended his administration of the admiralty. The Duke of

¹ The sergeant-at-arms wears a sword, of course, but he is not a member of the House and his chair is technically outside the chamber.

² Sir Henry Lucy, *Lords and Commons* (New York, 1921), p. 97.

³ The immediate occasion for the change, according to one authority, was the action of a certain journalist who was brought to the bar in 1771 for having published a report of the House proceedings. On rising from his knees, after being duly reprimanded by Mr. Speaker, this unabashed offender brushed the dust from his trousers and exclaimed, "What a damned dirty House!" The members did not know whether to be angry or amused.

Wellington was summoned to the bar in 1814 that he might receive the thanks of the House for his services in the Peninsular Campaign. And fourteen years later, Daniel O'Connell came there to plead for Catholic Emancipation. Many other historic examples might be given. Technically, the bar is outside the House and hence beyond the scope of the rule that no one who is not a member may utter a word within the sacred precincts. The American custom of inviting distinguished visitors to address the legislature from the speaker's dais has no counterpart in England.

Another term which figures in the parlance of the House is the gangway. It is a passageway running at right angles to the center aisle. Reference is commonly made, therefore, to "the benches below the gangway," or "above the gangway." There is no rule governing where members shall sit (except on the two front benches), but the tendency is for the younger members to find seats below the gangway. This location, in any event, affords a better vantage-ground from which to assail the ministers. During the times that the Labor ministry has been in power, the Conservatives took the opposition side of the House above the gangway, while the Liberals sat below it. The Irish members, in the old days, always sat below the gangway on the opposition side,—no matter which of the two parties was in power. It is a tradition of the House that these benches below the gangway can be counted upon to furnish trouble if a minister goes looking for it.

The gangway.

But in recent years the back benches have hardly lived up to this tradition. Some of the Labor members, especially the "wild men from the Clyde," supply noise and interruptions enough; but they have hardly atoned for the withdrawal of that lively delegation which came from the green regions between Cavan and Cork. For more than half a century prior to the world war these Irish members flooded the chamber with their piquant individuality. They provided much of the eloquence, most of the humor, and all of the disorder. Their quickness of wit atoned for their lack of gentility. One day an absent-minded member, on finishing his speech, sat down on his tall silk hat and crushed it flat as a doormat. Whereupon an Irishman, from below the gangway, arose and gravely said: "Mr. Speaker, permit me to congratulate the honorable member that when he sat on his hat his head was not in it." A long-winded member, goaded by flippant interruptions, once undertook to admonish the House. "I am not speaking to

The noisy section of the House.

you," he said, "I am speaking to posterity." "Hurry up," bawled an Irish member, "or you will soon have your audience in front of you." Not all the humor has flown from the House even yet, but a goodly portion of it went with the signing of the Irish treaty.

The division lobbies.

When the House of Commons proceeds to take a record vote it is not the practice to call the roll as in the House of Representatives. A "division" is ordered by the Speaker, and the House divides in a literal sense. Adjoining the chamber, with entrances from its vestibule, are two rooms known as division lobbies. When the question is put, the members are herded into these lobbies. Those voting *Aye* go to the right; those voting *No* to the left. Meanwhile, electric bells begin to tinkle in the reading room, smoking room, restaurant, and elsewhere, warning members that a vote is being taken. Six minutes are allowed before the lobby doors are closed. Then the members in each of the lobbies pass before a little desk and have their votes recorded. Ordinarily the process does not take long—about ten minutes or so. A roll-call in the House of Representatives consumes nearly four times as long.

Whips and their duties.

The marshals of the House are the party whips. It is they who steer the members into the division lobbies and make sure that all stragglers are rounded up. Each political party has two chief whips, senior and junior, besides several assistant whips. The chief whip of the ministerial party must make sure that a majority is within call at a moment's notice, for a defeat in the division lobbies may spell irretrievable disaster to the ministry. The chief opposition whip, similarly, employs all his ingenuity to catch the other side napping. Both these functionaries must be vigilant, resourceful, good tempered, and tactful. They must be constantly in attendance, no matter how dreary the debate becomes, for the House may divide at an unexpected moment. It was Disraeli, I think, who once said that the functions of a chief whip were "to make a House, to keep a House, and to cheer the ministers." The description holds good to-day.

Pairs and pairing.

Members of all parties are under obligation to let their whips know where they can be found in case a hurry call has to be sent out. And if an important division is impending, each member is in duty bound to get himself paired. The pairing is arranged by the rival whips. Each has his list of absent members who have declared their desire to vote *Aye* or *No*. These members are then paired off, one against another, so far as they will go. The chief whip on the

ministerial side holds the titular office of parliamentary secretary to the treasury and draws a salary as such, but he has no duties connected with the treasury. The three junior or assistant ministerial whips also have sinecure positions on the treasury pay roll. They are rated as junior lords of the treasury. The opposition whips get no emolument but only honor—and the hope of a salary when their party comes into power.

Among the present-day functions of the House, the oldest is that of receiving and presenting petitions. Originally the Commons received petitions from the people and presented them to the king. The latter decided whether the petitions should be granted. The petitions still keep coming in, although not in such large numbers, and they no longer go to the crown for consideration. A few petitions are presented at almost every sitting of the House by members whose constituents have prepared them. But they are not read to the House. The member who presents a petition on behalf of his constituents merely indicates its nature and tells how many signatures there are to it. Thereupon the speaker directs him to drop the document into a sack which hangs to the left of the chair. At intervals the contents are carried to the committee on petitions, which is supposed to examine them carefully—but never does.

Presenting
petitions.

When a petition goes into the sack, that is the last of it. "As well might it be dropped over the terrace into the Thames."¹ Monster petitions come to the House at times, petitions bearing signatures by the hundreds of thousands. They are carried down the aisle by attendants who deposit them at the foot of the clerk's table. Sometimes they are too big for the sack, in which case, after being formally presented, they are carried out again. The whole thing is nothing but a gesture, the shadow of what was once a reality. Petitions play a small part in the House procedure of to-day, but the tradition of their ancient importance is kept alive by the rule which gives the filing of petitions a priority over all other business in the House, no matter how urgent.

What be-
comes of
them.

There is no clapping of hands in the House of Commons. Applause is not given in that way. When a member desires to show his approval of something that has been said, he cries "Hear! hear!" Others may join in the chorus until it assumes the proportions of a babel. But these exclamations do not invariably express sentiments of approval. By an appropriate modulation of the

How the
House ap-
plauds.

¹ Sir Henry Lucy, *Lords and Commoners* (New York, 1921), p. 106.

voice the words may be made to throw ridicule on what a speaker has said. "The present government has done much for India," asserts a minister. "Hear, hear! Hear, hear!" comes the ejaculation from the opposition benches—which, being interpreted, means that the opposition believes it in a satirical sense. Interjected at just the right moment, these words are often used to puncture a swelling bubble of eloquence. The House uses other forms of vocal interruption. Groups of members join in shouting, "Order, order!" or "Retract, retract!" "Division, division!" "Resign, resign!" and so on. Sometimes, in the attempt to howl down a speaker, they keep it up until the House is in a turmoil.

"Naming"
a member.

The speaker of the House, in his endeavor to restore order, does not pound a gavel. He has no gavel. His only weapon is his voice. Above the commotion, he rises from his chair, puts out his hand and quietly commands the honorable gentlemen to be in order. He is usually obeyed. No member is allowed to be on his feet when the speaker is standing. Disraeli once said that in his day "even the rustle of the speaker's robe" was enough to check an incipient riot. But it has not been so on all occasions. Sometimes a speaker has had to expostulate rather vigorously. He may call upon a member to retract the unparliamentary expression which has caused the hubbub, or to apologize for some disparaging reference to a fellow member. In the event of a refusal he may order the offending member to leave the House, or in an aggravated case he may "name him."¹ When the speaker names a member his action is always followed by a motion to suspend the latter from the service of the House. This motion is put without debate and is invariably adopted. The suspension, unless rescinded, is for the balance of the session.

"Spying
strangers."

Although there are galleries for visitors the theory still persists that the debates of the House of Commons are secret. Visitors are

¹ When addressing a member, in the ordinary course of debate, the speaker does not call him by name. Nor is any member designated in that way by his fellow members. It is always "the Honorable Member for So-and-So," or if he be a privy councillor he is referred to as "the Right Honorable Member." Members who belong to the army or the navy are always alluded to as "the Honorable and Gallant Member," lawyers as "the Honorable and Learned Member." A member with a courtesy title (see p. 108, *note*) is referred to as "the Noble Lord," or, in the case of a lady of rank (e.g. Lady Astor or the Duchess of Atholl) as "the Noble Lady." A member refers to one of his own party as "my Honorable Friend," to a member of another party as "the Honorable Member." The speaker addresses and refers to members in this same way except that he makes no distinction as to party affiliations. When he names a member for disciplinary purposes he says "I name Mr. So-and-So to the House."

merely tolerated; their right to be present at any time is not recognized by the rules of the House. This is shown by the way in which the House proceeds to clear the galleries when it wants them cleared. No resolve to go into executive session is ever presented, as in Congress. Some member of the House, usually the prime minister, merely draws the speaker's attention to the fact that strangers are present in violation of the rules. This ancient custom of "spying strangers" is a signal for the speaker to put the question "that strangers be ordered to withdraw," a question which is not open to debate. If the vote is in the affirmative the galleries are thereupon cleared, even the representatives of the press being ordered out. The last occasion upon which strangers were "spied" in the House was during the two-day session on proposals for compulsory recruiting (April 25-26, 1916). On this occasion not a soul was permitted within earshot except the members of the House, the clerk, and the sergeant-at-arms. But the clearing of the galleries, it ought to be added, takes place on rare occasions only; there have been only three of them during the past sixty years.

Congress does most of its work in broad daylight; the House of Commons prefers the hours of darkness. It often sits late, sometimes very late. Occasionally it sits all night without adjourning. But its sittings ordinarily come to a close at midnight or thereabouts, whereupon the principal doorkeeper steps forth a pace or two into the lobby and in a strident voice calls out, "Who goes home?" The policemen in the corridors spring to attention and echo, "Who goes home?" Through the library, the smoking room, the side-corridors, and even along the terrace by the Thames, the cry resounds, "Who goes home?" Ministers and private members gather up their papers and drift down the center aisle through the swing-doors while the chorus of "Who goes home?" pours into their ears. Thus the Mother of Parliaments goes home.

How the
House ad-
journs.

More clearly than anything else among the odd ways at Westminster this cry brings back the London of Pepys and Wren and Defoe. From Westminster to London in those days was a lonely jaunt and the way was not safe for travel by night. The streets of the intervening parishes were policed, to be sure,—but only by tippling constables who spent most of their time in the alehouses. Thugs and roisterers roamed the poorly-lighted roads, and did not

A relic of
old London.

hesitate to set upon lone wayfarers, whether in vehicle or afoot. So individual members of the House did not dare go home alone, and it became the practice to send squads of well-armed "beef-eaters" from the Tower to escort those who were ready to leave before the sitting adjourned. As each squad arrived, its commander notified the doorkeeper and he sounded the call, "Who goes home?" Those who were minded to go had the opportunity. Or, if they chose to remain a while longer, the call would be reiterated when the next squad from the Tower arrived. Westminster has become engulfed in Greater London and there is no safer city anywhere, hence the practice of sending armed escorts has long since been abandoned. But the doorkeeper and his fellow attendants still do their vocal part, even as their predecessors did it three hundred years ago.

"The usual time."

As a parting word to the members as they file out the doorway, the attendants keep shouting: "The usual time to-morrow, Sir"; "The usual time to-morrow." But why should the commoners need this reminder? Everybody knows that a quarter to three o'clock in the afternoon is the usual time, for it is fixed in the standing orders, and if perchance there were to be any departure from it, every morning paper in London would headline the fact. The members of to-day need no reminder as they leave the House, but there was a time in bygone centuries when they had neither standing orders nor newspapers to inform them. So the attendants assumed the admonitory function and no one has ever prevailed upon them to give it up.

Members of the House cannot resign.

In the United States, when a member of the House of Representatives desires to resign, he merely hands his written resignation to the speaker. A writ may thereupon be issued for a special election to fill the vacancy. But a member of the House of Commons is not permitted to resign in this direct and simple fashion. According to a rule which dates back to 1623, no member can resign his seat. Having been drafted for service by his constituents, he must continue as their representative until the existing parliament comes to an end. This rule, of course, is a heritage from the days when service in the House was regarded as a burden to be unloaded at the first opportunity. To-day, although the privilege of serving in the House is eagerly sought by Englishmen of all ranks, the old rule against resignations persists unaltered.

Yet there are practical considerations which make it desirable to relieve an individual member from further service when he insists upon it, and a roundabout way of doing this has been devised. It is provided by the Placemen Act of 1705. By the provisions of this act any member of the House who accepts an office of profit from the crown is forthwith disqualified from further service.¹ The intent of this statute was to safeguard the House against the virtual bribery of its members by the king, whose habit it was to bestow lucrative sinecures upon influential commoners, thereby making them subservient to the royal influence. They became placemen and pensioners of the king, ready to do his bidding in the House. But parliament became concerned at this impairment of its freedom and eventually decreed that the member who went on the royal pay roll must ipso facto vacate his seat. This put an end to one method by which the king could control the nation's lawmakers.

How this obstacle is overcome.

Now it happens that there is an ancient office in the gift of the crown, known as the stewardship of the Chiltern Hundreds. The Chiltern Hundreds are three parcels of land in Buckinghamshire. Once upon a time this land belonged to the king and as it contained some forests a royal steward was put in charge of them. But the forests have long since been converted into parks and pastures so that there is no longer anything for the king's steward to do. Nevertheless the office has not been abolished. It is kept in existence for the sole purpose of providing a means of exit from the House of Commons. When, therefore, a member desires to vacate his seat, he applies to the chancellor of the exchequer for appointment to this nominal post. The request is always granted; a warrant is issued appointing the member to be steward of the Chiltern Hundreds during His Majesty's pleasure, and notice of the appointment is duly inserted in the official gazette. The speaker thereupon takes cognizance of the fact that the member has disqualified himself by being appointed to an office of profit in the gift of the crown and accordingly declares him disqualified.² This done, the newly appointed steward of the Chiltern Hundreds retains his royal sinecure "during pleasure"; that is, until some other member desires freedom from service in the House. On a few occasions two

They "take the Chiltern Hundreds."

¹ For an amendment relating to members of the ministry, see p. 73.

² The warrant gives the appointee "all wages, fees, allowances and privileges" connected with the office. There are, in fact, no fees or emoluments of any sort—but that makes no difference.

appointments have been made and two resignations received within twenty-four hours.¹ When a London newspaper, therefore, prints a rumor that some member is "likely to take the Chiltern Hundreds," this is merely a way of saying that he is going to resign by circumventing the rule that a member cannot resign.

An odd circumlocution it may seem, and a superfluous one. From time to time some Englishmen have thought it so. More than a hundred and fifty years ago a distinguished statesman asked leave to bring in a bill enabling a member to vacate his seat by merely handing his resignation to Mr. Speaker, but the House resented the proposed innovation and by a decisive vote refused to allow even the introduction of the measure. Could one find a better illustration of that loyal adherence to ancient customs which is so characteristic of parliament? The House enjoys its old customs, and that is the way to preserve them.

How the
House dis-
solves.

For many centuries it was the custom of the king to dissolve parliament in person. With glittering array he came in a state coach to Westminster, mounted the throne in the House of Lords, and read his speech of dissolution. But nowadays parliament is usually dissolved by commission. The crown appoints five lords commissioners (among them the lord chancellor is always included) to perform the duty. These commissioners, in scarlet robes, take their places on a bench in front of the great throne in the House of Lords. The faithful commoners are then summoned to the red chamber and the lord chancellor reads the king's speech to the assembled gathering. It is always a perfunctory deliverance, thanking parliament and announcing that the work for which it was called has been completed. When the commoners have heard it they go back to their own chamber and make ready to leave. There are no votes of thanks to everybody for everything, as in American legislatures. There are no speeches laden with an exchange of compliments. There is no presentation of a gold gavel or an illuminated address. The speaker, rising from his place, walks backward down the wide aisle between the benches, bowing solemnly to his empty chair.² The sergeant-at-arms, with the mace

¹ But what if too many members should happen to want to leave the House at once? In that case there are some other sinecure appointments, notably the stewardship of the Manor of Chipstead, which can be utilized in addition to the Chiltern Hundreds. Occasionally a member has gone out of the House by this Chipstead route.

² This odd custom is said to hark back to the time when the House met in St. Stephen's Chapel. In those days the speaker bowed toward the altar. The altar

on his shoulder, paces slowly after him. Ministers and members, forgetting their political animosities, gather in groups to say good-bye and to wish each other good luck in the coming election, for a general election always follows a dissolution. The cry of "Who goes home?" again resounds through the vaulted halls as the members pass the portals and are whirled away in the motors that stand chugging in line outside. Who goes home? Some of them have gone home to stay there, for the close of a parliament always marks the end of many political careers.

The odd ways and pageantry of the House are touched upon in many books such as Sir Henry Lucy, *Lords and Commons* (London, 1921); A. Wright and P. Smith, *Parliament, Past and Present* (2 vols., London, 1902); H. Graham, *The Mother of Parliaments* (Boston, 1911); Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921); E. Lummis, *The Speaker's Chair* (London, 1900); and J. Johnston, *Westminster Voices* (London, 1928).

is there no more, but the bowing continues. The members of the House, when they enter or leave the chamber during the regular sittings, also bow toward the speaker's chair. Similarly, in the British navy, every officer or man who sets foot on the quarterdeck of a war vessel salutes,—because in the old days a sacred image or picture was always placed on the quarterdeck. This same tradition has been inherited by the American navy.

CHAPTER XII

PARLIAMENTARY FINANCE

This House will receive no petition for any sum relating to the public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the crown.—*Standing Orders of the House of Commons*, No. 66.

Importance
of money
bills.

It is a fundamental principle of sound public finance, generally recognized in all civilized countries, that no taxes shall be levied or expenditures authorized without specific action by the representatives of the people. This principle has had ostensible observance in England for many centuries, but it has only been strictly observed since the accession of William III. Revenue and expenditure are by far the most important matters that come before legislative bodies, and there are very few important projects of lawmaking which do not, directly or indirectly, affect the interests of the taxpayer. "The power to tax involves the power to destroy," declared Chief Justice John Marshall in one of his famous decisions. "Who holds the purse holds the power" wrote James Madison in *The Federalist*. Both were right. Having full power to tax and to spend, a government needs no other authority. Hence it is not surprising that money bills should take up a large portion of the time which the House of Commons devotes to its work. They are regarded as sufficiently important to have a special procedure of their own.

British pro-
cedure:

1. The Treasury.

The pivotal point in British national finance is the institution known as the Treasury. It is the lineal descendant of the old Norman exchequer or revenue bureau of the king. Ostensibly the British Treasury of to-day is officered by a board, the Treasury Board it is called, consisting of a first lord of the treasury (who is usually the prime minister), the chancellor of the exchequer, and several junior lords of the Treasury, all of whom are members of parliament and of the ministry. In addition there is a parliamentary secretary and a financial secretary who are also members of the ministry. And, finally, there is a permanent secretary to the

Treasury who is not a member of parliament, or of the ministry; but is the head of the civil service.

Now although the Treasury Board is constructed in this plural fashion it is not really a board at all. Its members never meet or perform any collegial functions.¹ The first lord, although he is titular head of the board, does not concern himself with its work unless some emergency arises.² The junior lords and the parliamentary secretary are purely political officers. All the functions of the Treasury Board are performed in its name by the "second lord of the treasury." This official, who is much better known as the chancellor of the exchequer, is a member of the cabinet and one of its most influential members. The financial secretary is his assistant in parliament and in administration. It is the chancellor's function to regulate the public income and expenditure, to propose changes in taxation, or any measures affecting the public debt, to pilot such measures through parliament, to prepare the annual budget, to collect the revenues, to keep the various public services supplied with funds, to control the currency, and to supervise the banks.³ Surely a big enough task for any one minister! The Treasury provides the money for carrying on every branch of the administration, hence its actual head (the chancellor of the exchequer) must keep in touch with them all. And this keeping in touch has developed into a considerable measure of supervision over all the other government departments.

Its organization.

The Treasury Board provides, therefore, a good illustration of the gap which so often intervenes between the nomenclature and the facts of British government. Nominally it is a board of five or six members, headed by a first lord. But its functions have been wholly transferred to a single official, the chancellor of the exchequer, who, by the way, has now nothing to do with the exchequer at all.⁴ This official is secretary of the treasury, comptroller of the currency and director of the budget all rolled into one. His office is the center around which the whole financial system of Great Britain revolves. But the chancellor acts always in the

A curious anomaly.

¹ To this statement there is a single exception. The members meet on one occasion, when a new ministry is formed, for the purpose of "calling in," or appointing the various secretaries.

² It will be recalled that the post of first lord is usually held by the prime minister.

³ Henry Higgs, *The Financial System of the United Kingdom* (London, 1914), p. 81. See also L. T. Heath, *The Treasury* (London, 1927).

⁴ The exchequer is the auditing department of British government. Its head is the comptroller and auditor-general, who is not a member of the ministry.

name of the Treasury Board and all his instructions to the various departments go out in the name of the "Commissioners of His Majesty's Treasury."

2. Preparation of the estimates.

The initial step in the financial work of parliament is the compilation of the estimates. In the autumn of each year a circular is sent by the Treasury to the heads of all departments asking them to furnish figures concerning their probable requirements for the next fiscal year.¹ Thereupon the financial officers in the various departments put their pens to paper and when their estimates are ready send them down to the Treasury. They must be made in a form prescribed, on uniform sheets, and in considerable detail. They must be accompanied by explanations of all increases over the estimates of the preceding fiscal year. All fixed charges, or charges upon the Consolidated Fund such as interest on the national debt, the civil list, the salaries of judges, pensions, and so on are not inserted in the estimates but are figured separately. More than one-third of the entire national expenditures are in this category. As for the controllable expenditures there is a general understanding that if a department desires a substantial increase in funds for any of its activities, it will consult with the chancellor of the exchequer or with his subordinates in the Treasury before including the amount in its estimates. In this way the Treasury has something approaching a veto upon departmental increases even before the estimates are made ready for parliament. If a disagreement arises between the chancellor of the exchequer and the head of any department concerning a proposed increase the matter is referred to the prime minister, or to the whole cabinet for adjudication.

3. Conferences on the estimates.

When the estimates are all prepared, and are in the hands of the Treasury, the first step is to have them checked up with the figures of the preceding year. Numerous conferences then take place between officials of the Treasury and officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile figures of probable revenues are prepared by the various departments to the best of their ability, and when the total estimates have been footed up it is usually found that more money is asked for than can be provided by the existing taxes. Hence it becomes necessary to insist upon reductions of expenditure where-

¹ The estimates for the army, navy, and air force do not go to the Treasury but are approved by the chancellor of the exchequer personally.

ever this can be done with the least detriment to the public service, or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the situation before the cabinet. The cabinet, after hearing his recommendations and after a full discussion of the various problems involved, authorizes the chancellor to lay his estimates and proposals before parliament, with such modifications as may have been agreed upon.

The estimates of expenditure, however, do not have to wait until all questions relating to the revenue are passed upon by the cabinet. They are presented to the House of Commons as soon as they have been approved, and preferably at the very opening of the session. A little later the chancellor of the exchequer makes an elaborate "budget speech" to the House in which he reviews the finances of the past, the revenue, the expenditure, the national debt, and the surplus or deficit. This review serves as a prelude to a more detailed statement of the financial program for the current year—particularly as regards new taxes, or increased taxes, or reduced taxes. Of old this budget speech was an all-day affair, but in recent years it has been much abridged and most of the figures that formerly rolled from the chancellor's tongue, hour after hour, are now given to the House in printed form. Gladstone, during his long parliamentary career delivered the annual budget speech on thirteen occasions, sometimes reeling off his statistics for four or five hours at a stretch. He did it with a charm which one of his admirers referred to as "setting figures to music." The budget speech, it may be mentioned, is made to the House sitting in Committee of the Whole.

4. The budget speech.

For several weeks the House devotes a large portion of its time to this financial program, approving the estimates and providing the funds. When debating the estimates it sits as a Committee of the Whole House "in supply"; when providing funds it sits as a Committee of the Whole House "in ways and means." Hence the terms House in Supply and House in Ways and Means, as they are colloquially used. The estimates are presented in sections and each section is taken up in "votes" or groups of items. The financial secretary of the Treasury champions the civil estimates; the secretary of state for war is responsible for presenting the military estimates; the minister for air brings in the air force estimates; and the first lord of the admiralty presents the naval estimates.

5. The House "in supply."

Thus the work on the floor is allotted to the men who know most about it. Amendments may be offered to strike out or to decrease any item; but no increases or new insertions can be proposed except by a member of the ministry, for a standing order of the House (quoted at the head of this chapter) stipulates that no proposal of expenditure can be considered unless it is made in the name of the crown, and only a minister has authority to speak in the crown's name. This means, as a matter of reality, that there is no chance of getting an appropriation for any purpose whatsoever unless the chancellor of the exchequer agrees to it. Rule No. 66 makes him as nearly a financial dictator as can be found in any country that maintains a system of representative government.

6. Changes
made by the
House.

Occasionally, however, if good reasons have been shown during the discussion, the minister in charge of the estimates (after consultation with the chancellor of the exchequer) will himself propose an increase or a new item, but in general the influence of the House is restricted to eliminations and reductions only.¹ In practice, moreover, the House accomplishes very little by way of revision downward, for when the ministers decline to accept a reduction they can summon a majority of the House to stand by them as a matter of confidence. On minor items the ministers sometimes give way for the sake of party happiness, but on important ones they stand their ground. The result is that the estimates go through with no drastic alterations and in a remarkably short space of time. The opposition concentrates its fire upon a relatively few "votes" and permits the rest to pass without debate.

The principal end achieved by these budget debates is not a reduction of proposed expenditures but a general airing of grievances and a wide-ranging review of administrative policy. If any member of the opposition is dissatisfied with some action of the home office, for example, he bides his time until the estimates for that department are reached. Then he moves a reduction in the minister's salary and uses this motion as a cover for his attack. But in any event the debates in Supply (exclusive of those on the supplementary estimates) must be concluded in twenty days. All votes become subject to the closure at the expiration of this time limit.

¹ By a ruling of the speaker no motion may be made to reduce the amount of a grant-in-aid. For a discussion of grants-in-aid, see Sidney Webb, *Grants in Aid* (London, 1920).

When the estimates have all been voted by the House in Supply, and the various revenue proposals have been approved by the House in Ways and Means, the whole is then embodied in two bills, a finance bill and an appropriation bill. The former deals with new taxes or changes in the rates of old ones; the latter authorizes all expenditures that have been agreed upon. Both are thereupon put through the usual stages and passed by the House.

7. The revenue and appropriation bills.

After the House of Commons has finished with the finance and appropriation bills they are sent to the House of Lords, but the upper chamber has now no alternative but to pass them without amendment. This limitation, it will be recalled, was established by the Parliament Act of 1911. If the Lords, having received a money bill at least one month before the end of the session, should neglect to take affirmative action the bill goes forward for the royal assent without their concurrence. This assent is a mere matter of form, and when it is given the appropriations become available to the various departments, and the Treasury proceeds to raise the revenues that have been authorized.¹

The House of Lords has no power to amend or reject such bills.

But while all this estimating, debating, and assenting is going on money must be had to carry on the government. To meet this need the House of Commons passes various "votes on account," in other words it grants sufficient funds to carry the various departments along until the annual appropriations become available. These votes on account are lumped together in a bill known as the Consolidated Fund (No. 1) Bill which is enacted early in the session. This bill also provides a sufficient grant of money to cover any deficits that may have been incurred during the previous fiscal year.

Votes on account.

It will be noted from the foregoing outline that the British national budget is framed, presented, debated, and passed in two divisions, one dealing with expenditures and the other with revenue. But both divisions emanate from the same source, namely the cabinet, and they are considered by the same body, that is, by the House of Commons sitting in each case as a committee of the whole House under two different names. The essential unity of the British financial system arises from the fact that the chancel-

The centralization of responsibility for British national finance.

¹ Increases in the rates of income taxes, or excises or customs duties, when proposed in the budget speech, go into force at once—before parliament has passed the finance bill and presented it for the royal assent. If for any reason the proposed rates do not go through, the additional taxes are refunded; but this very rarely occurs.

lor of the exchequer, with the aid of his fellow ministers, is responsible for preparing the entire budget, responsible for what it contains, and responsible for getting it adopted by parliament. The concentration of financial responsibility is complete, which is not yet true of budget procedure in Congress despite the marked progress which has been made during recent years.

Comparison
with Amer-
ican proce-
dure.

In the United States the estimates of expenditure are compiled by the director of the budget from figures submitted to him by the various departments. The director of the budget transmits these estimates to the President who, in turn, forwards them to Congress with his recommendations. Thus far the British and American procedures are substantially alike, inasmuch as the executive in both countries takes the initial step and submits to the legislative body a general plan of national expenditures. But there the parallel ends. In the House of Representatives the estimates go to a committee on appropriations which may recommend changes in them at will, either up or down, and from this committee they go before the whole House which has an unrestricted right both by law and by usage to increase, decrease, insert, or eliminate. There is no rule, as in the House of Commons, that additions may only be made on recommendation of the executive. And after the House of Representatives is through with the estimates the Senate of the United States (unlike the House of Lords) takes them in hand, making such further changes as it may desire. In a word there is no such executive control over financial measures in Congress as is exerted by the British ministers in parliament, and hence there is no such complete fixation of responsibility.

There is a further difference. In Congress proposals for raising the necessary revenues sometimes come from the secretary of the treasury through the President, but they may also be brought forward by any member of the House on his own initiative. And in either case they are considered by a different committee from that which handles the appropriations. Expenditures are handled by one set of men, and revenues by another, each working separately. The chairmen of the two committees confer a good deal, and a certain amount of team play is secured; but the responsibility is divided. Finally, it will be noted that in the House of Commons, when appropriations or revenue measures are under discussion, the heads or deputy heads of the executive departments are on the floor to explain, defend, and answer questions. In Congress

this is not the case. The head of a department may be asked to submit explanations in writing, or to come in person before a congressional committee; but he does not appear on the floor of the House or the Senate, for he cannot be a member of either body.

All this does not mean, however, that the British budgetary system, taking it as a whole, is superior to the American. On the contrary there are some respects in which it is inferior. Definite fixation of responsibility is an excellent thing in its way; it makes for economy in public expenditures, but it inevitably involves a concentration of power. In Great Britain the cabinet, not the House of Commons, is the body which really controls the finances of the realm. And the cabinet is tributary to the chancellor of the exchequer, who is its financial chief and adviser. To this it will be replied, of course, that the chancellor is merely the creature of the House and absolutely responsible to it, which is all true enough if one is discussing the theory of English government. But the fact is that the House of Commons, with all its theoretical control of the ministry, cannot increase or diminish a single item in the budget, against the chancellor's will, except by persuading a majority of the commoners to desert their own party and turn their own leaders out of office for the benefit of the other side. A putative power which assumes for its exercise that politicians will regularly do anything of this sort is a shaky basis for ministerial responsibility in matters of finance to rely upon. Some years ago a committee reported that in a whole quarter of a century it could not find a single instance in which the House, by its own direct action, had reduced, on financial grounds, any estimate submitted to it by the ministry.

Defects of the British procedure.

Gives too much power to the cabinet.

Still, neither the chancellor of the exchequer nor his colleagues wish to take the chance of driving their followers to mutiny. On the contrary, they also are politicians and hence quite sensitive to public opinion. They avoid, so far as practicable, the submission of proposals which stir up opposition among the people and hence arouse undue antagonism in the House. Even on the floor, after the proposals have been presented, they often give way when it seems good political strategy to do so. With due allowance for ministerial sensitiveness and courtesy, however, the English cabinet is the real comptroller of the national purse. If the British budget were put directly into effect as soon as it has been approved by the cabinet, without going to the House at all, its final figures

The compromise.

would not be appreciably different. But in that case the opposition would be deprived of what is now its best opportunity for launching its criticisms against the general policy of the government.

The famous
Rule No. 66.

It should be explained, of course, that the rule against inserting new items in the estimates, or increasing items already there, is not a hard-and-fast constitutional provision, but merely a rule of its own which the House of Commons can repeal at any time. It is a self-denying ordinance which the House imposed upon itself more than two centuries ago and which it could rescind to-morrow if it chose. But there is no probability that it will ever do so, for the rule is one which most Englishmen (and many Americans also) look upon as a good one for any legislative body to have.

Deadens the
interest of
the individual
member.

On the other hand the fact that private members cannot move, insert, or increase any item causes many of them to lose interest in the budget. Politicians are interested in opening, not in closing, the public purse. The member, in any legislative body, who displays a genuine interest in cutting down items of expenditure rather than in raising them is likely to get himself looked upon as a wild ass of the desert. Such men usually succeed in getting someone else to succeed them at the next election. So, night after night, when the House is "in Supply," the chamber remains half empty. As an Irish member once complained, it is "overrun with absentees."

The dry
budget de-
bates.

It is hard to imagine anything more dreary than these "debates" on the estimates—dreary for everybody except the minister who is putting his items through and the few opposition critics who are nibbling at him. The ministers can sit snug, for they know that time is on their side. When the twenty days are up the estimates must be voted on, and they have the votes to put them through. Hence, although the discussions appear to be conducted in a go-as-you-please fashion, the estimates are really put through the House of Commons under much greater pressure than is the case in the House of Representatives. Sometimes half the entire estimates go through at Westminster in a single day—the last day. This means that millions are voted without any parliamentary discussion at all. It is a fair criticism of the British House of Commons, and one often voiced by its own members, that inadequate discussion is devoted to the financial problems of a great empire which is hard pressed to raise the four billion dollars that it now spends each year.

The House of Commons has long appreciated the need for some alterations in its financial procedure. In 1912 it created a Select Committee on Estimates to go over the proposed appropriations before they came up in the Committee of the Whole House and "to report what, if any, economies consistent with the policy implied in those estimates should be effected therein." But when the world war came upon Europe this select committee was literally swamped out of existence by the huge increase of expenditures. Later the House ordered that further study be given the matter and appointed a committee on national expenditures to work out a plan whereby the estimates might be assured of more careful consideration. This committee made various recommendations, and although these have not yet been adopted one of them is particularly worth noting because it indicates where the financial procedure of parliament is avowedly weak. This is the proposal that amendments offered by members, when the House is sitting in Supply, should not be treated as hostile to the ministry, or as involving any want of confidence in it, but merely as business propositions on which the House should be free to disregard party lines. This, of course, would greatly weaken the cabinet's control over financial measures in parliament and would undoubtedly lead to the making of many changes in the estimates which the ministers, under the present usage, would never tolerate.

Attempts to improve the procedure.

When the appropriation and finance bills have been duly passed by parliament, and have received the royal assent, it is the function of the Treasury to carry them into operation. Practically all the national revenues, whether from customs, excises, death duties, income taxes, or such national services as the post office, go into a repository known as the Consolidated Fund. This fund is kept on deposit in the Bank of England, from which it is checked out to the paymaster-general who distributes it in payment of salaries and bills. Before any transfer of money to the paymaster-general is made, however, it must be approved by the comptroller and auditor-general, an officer of high standing who is head of the exchequer, independent of the Treasury and responsible to parliament alone. His duty is to make certain that an appropriation to cover the expense has been made by parliament and that this appropriation has not been already exhausted. All appropriations are still made "to the crown" as they were in the middle ages. But they are earmarked for the use of specified departments or

The control of disbursements.

services, and it is not within the power of the crown to divert the money to other uses. On the other hand the spending of an appropriation is not obligatory. The Treasury can withhold an expenditure after it has been authorized and leave the money unspent.

How emergencies are handled.

In view of the fact that all the financial needs of the government for the fiscal year are embodied in a large appropriation bill and passed by parliament during the course of each fiscal year it may well be asked: How about the unforeseen needs which must inevitably arise after parliament has made its appropriations and is no longer in session? How are unexpected and urgent calls for military or naval outlays met? There is an element of flexibility in the British financial system which permits the government to take care of such emergencies. In the first place the regular estimates contain, in the case of each department or service, an allowance for unforeseen contingencies. From long experience in the preparation of estimates each department is able to figure out a sum that may reasonably be expected to cover things unforeseen and unexpected. Then there are certain funds, distinct from the Consolidated Fund, which can be drawn upon by the Treasury when emergencies arise either at home or abroad. It is required, however, that all advances from these funds shall be reported to parliament and repaid out of the appropriations of the next fiscal year.

Transfers from surplus.

Furthermore it is provided in the annual appropriation act that if a necessity shall arise for incurring military or naval expenditure not covered by specific appropriations and which cannot without detriment to the public service be postponed until provision can be made for it by parliament in the usual course, the Treasury may authorize such expenditure out of any surplus funds available at the moment in the same department. There are occasions, however, when the emergency is too great to be met by any or all of these provisions; in that event parliament must be hurriedly summoned and asked to make new appropriations.

Transfers from regular appropriations:

In the United States, when Congress appropriates money for the use of the various departments and services, the heads of these departments are not given much discretion in spending it. Money voted for the needs of one bureau in a department cannot be used for the needs of another bureau in the same department, nor can funds voted for one purpose be used for another purpose even

within the same bureau,—for salaries, let us say, instead of materials and supplies. The American tendency is to tie the executive officials tight by designating as much in detail as may be the purpose for which the money can be spent. If an amount is appropriated for equipment, and the equipment turns out to be unnecessary, this money cannot be used for materials, or supplies, or services, or anything else that may be accounted just as useful.

1. In America.

In Great Britain a good deal more latitude is allowed. There the appropriations are arranged by "votes," which are divided into subheads, and these, again, into items. Parliament passes the appropriations by votes, not by subheads or items, leaving to the Treasury the right to transfer money from one subhead or item to another. Thus it is less rigid than Congress in earmarking appropriations for specific purposes; but the Treasury in England takes up the slack that parliament leaves. Next to nothing can be done in any department by way of changing the details of expenditure, the salaries of clerks, or the duties of public employees without the approval of the Treasury. If the home office wants an additional inspector of constabulary, or the foreign office desires to add an additional secretary to the staff of the British embassy at Paris, a request must be submitted to the treasury (the chancellor of the exchequer) and sanctioned before it becomes effective. This paternal authority of the Treasury rests upon long usage and is not now questioned or resented by the various departments. It has the merit of allowing all reasonable leeway while providing a definite responsibility for the details as well as for the gross amounts of expenditure.

2. In Great Britain.

The total revenue of the United Kingdom for 1929 amounted to about four billion dollars; that of the United States totalled less than three and a half billions.¹ The chief sources of national revenue in Great Britain are customs duties on imports, excises on liquor, tobacco, and various other luxuries, inheritance taxes (estates taxes or death duties they are called), income taxes and surtaxes, corporations profits taxes, motor vehicle taxes, land taxes, stamp taxes on legal documents, and profits from government enterprises (the postal, telegraph, and telephone services). It will be noticed that almost every conceivable source of revenue

British revenues.

¹ The growth of the British budget during the decade 1913-1929 is impressive. In 1913 the total expenditures were less than £200,000,000; in 1929 they were more than four times as large. The peak was reached in 1918 when they totalled more than two and a half billion pounds.

is being tapped to meet the enormous expenditures which have been placed upon the country as a legacy of the war and the subsequent industrial depression.

National
expendi-
tures.

Among general items of expenditure the "national debt services" bulk largest of all. Interest on this debt amounts to more than one and one-half billion dollars per annum. In the United States the annual interest on the national debt is less than half that sum. The British army, navy, and air forces consume most of another billion. The civil services of all sorts (including old age pensions and other forms of social insurance) take the rest.

The Bank
of England
as fiscal
agent.

In connection with British national finance the Bank of England deserves a word, for it is the depository of the national funds and the government's chief fiscal agent. Founded in 1694 for the purpose of providing the nation with loans it has long enjoyed not only the exclusive right to receive such government deposits as are kept in England but a virtually exclusive right, among English banks, to issue paper money.¹ Unlike the federal reserve banks of the United States the Bank of England is not subject to control or direction by a government board. The British government owns no stock in the bank and appoints none of its directing officials. Having no depository of its own it merely uses the Bank of England for this purpose as a private customer would do. The bank receives the government's revenue, credits it to the proper account, and pays it out under the direction of the paymaster-general. The Bank of England also serves as a registry for government bonds and acts as the government's agent in paying interest upon the national debt.

Auditing
the ac-
counts.

All the financial accounts of the national government are audited in the office of the comptroller and auditor-general. This official is appointed by the crown, holds office during good behavior, and cannot be removed except at the request of both Houses of Parliament. He has no power to disallow any item of expenditure and merely reports irregularities to the Treasury for such action as it may see fit to take. But the comptroller and auditor-general makes an annual report to parliament and this report is referred to the standing committee on public accounts which is appointed in the

¹ Both privileges are enjoyed by banks in Scotland. The Bank of England's monopoly as respects both deposits and notes is confined to England and Wales. A few English banks, moreover, which had the right to issue paper money prior to 1844 have been permitted to continue in the enjoyment of this privilege. The total amount of these issues now outstanding is relatively small.

House of Commons at the beginning of each session. A leading member of the opposition is usually appointed chairman of this committee. Its business is to go through the report and accounts, noting cases in which the appropriations have been exceeded, hearing explanations of any irregularities, and finally reporting to the House. The moral effect of such a report is considerable.

The best book on this subject is the volume on *The System of Financial Administration of Great Britain*, prepared by Messrs. W. F. Willoughby, W. W. Willoughby, and S. M. Lindsay, for the Institute for Government Research (New York, 1917), but mention should also be made of Henry Higgs, *The Financial System of the United Kingdom* (London, 1914); J. W. Hills, *The Financial System of the United Kingdom* (London, 1925); E. H. Young, *The System of National Finance* (London, 1915); H. J. Robinson, *The Power of the Purse* (London, 1928); A. H. Gibson, *British Finance, 1914-1921* (London, 1921); T. L. Heath, *The Treasury* (London, 1927); E. H. Davenport, *Parliament and the Taxpayer* (London, 1919); A. L. Bowley and Josiah Stamp, *The National Income* (London, 1927); C. F. Bastable, *Public Finance* (London, 1903); H. Dalton, *Principles of Public Finance* (4th edition, London, 1927); and A. C. Pigou, *A Study in Public Finance* (London, 1927).

CHAPTER XIII

ENGLISH POLITICAL PARTIES: A SKETCH OF THEIR HISTORY

Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. If parties cause some evils, they avert and mitigate others.—*Lord Bryce*.

The party is, in fact, the most effective political entity in the modern national state. It has come into existence with the appearance of representative government on a large scale; its development has been unhampered by legal or constitutional traditions, and it represents the most vigorous attempt which has been made to adapt the form of our political institutions to the actual facts of human nature.—*Graham Wallas*.

Why political parties go with popular government.

No discussion of free government can pretend to any sort of completeness if it disregards the place and function of political parties in the mechanism of the commonwealth. True enough, political parties are not of the government; they are below or behind it; they work in the twilight zone of politics; yet their rôle in the actualities of representative rulership is undeniably great. No free large country has ever been without them, as Lord Bryce has said. No free country ever can be without them—and stay free. They have been functioning—Lancastrians and Yorkists, Cavaliers and Roundheads, Whigs and Tories, Liberals and Conservatives—in England for at least five hundred years, ever since England had a parliament worthy of the name.

Their British origin.

England, in fact, is the ancestral home of political parties as we now understand them, that is, of groups organized to promote by peaceful means their own conceptions of the general welfare. Political parties, in this sense, are of British origin because responsible government is of British origin. Partyism and responsible government are inseparable; one goes with the other. The quack-doctors of political science tell us that the world would be better off if partyism were exorcised from the body politic—but if the operation were successful democracy would die in the process. It is easy to say that we should "change the narrow spirit of party into

the diffusive spirit of public benevolence," but no one has yet shown how it can be done.

Parties are inevitable because the people of any country, when given the means of controlling their government, are sure to disagree among themselves. They will not be of one mind as to how the government ought to be carried on. On the other hand they will not split into an indefinite number of small groups. They will range themselves into two, three, four, five, or some other small number of factions—because there are only so many possible attitudes toward the more important political issues. It is a common saying that there are two sides to every question. In politics there are often more than two. Take the tariff, for example. You can raise it, lower it, revise it (by raising some duties and lowering others), or leave it as it is. Here is a political issue with four sides to it, and consequently it affords an opportunity for at least four groupings of political opinions. So with India. The British people can give India no self-government, or a little, or much, or can concede to India complete authority. Or, again, take prohibition as an issue. There are bone-drys, drys, wets, wringing wets, and all degrees of moisture in between. So it is with other political problems; the alternatives are reduced by the nature of the issue, or by practical considerations, to five, four, three—and frequently to two. Anyhow, as someone has cynically remarked, there are only two sides to a public office—the outside and the inside. Parties exist, therefore, because although men and women are ostensibly free to form their own individual opinions on political questions they find themselves confronted with a limited number of alternatives, and, if you will, a limited number of offices.

The choice among alternatives.

There has been much controversy as to whether political parties are good or evil. Most of this discussion is beside the point. The vital question is not whether political parties are a bane or a blessing, but how they can best be made to serve the interests of democratic government. How can we make them help, not hinder, a scheme of government by the consent of the governed? And the answer to this vital question will never be secured by ignoring the existence of political parties, or by endeavoring to conduct its government on the assumption that they can be left out of reckoning. Political parties, by whatever name they may be known, should be regarded in the same light as parliaments,

A help or a hindrance?

presidents, and courts—as an essential part of the governing mechanism.¹

The earliest parties or "factions."

As for the origin of parties they probably began with human nature. Men have thought in groups ever since they began to think. It is much easier to think that way. Thinking is work. The generality of men prefer to let others do it for them. They take their opinions ready-to-wear. It is sometimes said that these earliest groups were factions, not parties. That is true, for they were literally, not metaphorically, at swords' points with each other. Victory was not decided by counting heads, but by breaking them. Battle-axes, not ballots, were what settled the outcome. The faction which won took all the power and all the rights. Its opponents were treated as rebels, insurgents, enemies of the state. They were dealt with as the Bolsheviks now treat the counter-revolutionaries.

Evolution of parties in England.

The student of history does not need to be reminded of the factional groupings which existed from earliest times down to the close of the middle ages. He has read of Pharisees and Sadducees, Patricians and Plebeians, Guelfs and Ghibellines. Perhaps it has not occurred to him that these were political parties in embryo. Their aim was to get the upper hand, to control the affairs of the community. If we call them factions rather than parties it is only because their methods were crude or violent. In mediæval England these political factions fought each other not only on the floor of parliament but sometimes on the battlefields as well. The Lancastrians and Yorkists, with their long drawn out and bitter rivalry, kept the land in a turmoil for almost a century. The Wars of the Roses were the work of politicians who had not yet learned to settle their controversies by the arbitrament of the ballot box. These wearers of the red rose and the white rose were members of rival parties, dynastic parties. So were the Cavaliers and Round-heads of the Stuart era. To-day we would call them Monarchists and Republicans, Legitimists and Reconstructionists, Conservatives and Progressives, or some such appellations.

Lancastrians and Yorkists.

Cavaliers and Round-heads.

Whigs and Tories.

A little later, when the supremacy of parliament became definitely established under William III, the nicknames Tory and Whig

¹ One of the most remarkable things about the older books on English government is the way in which they ignored this topic. They dismissed parties and partyism as irrelevant to the main theme. Until Lowell's *Government of England* appeared in 1908 no book on the subject contained even a summary discussion of English political parties in their relation to the actual workings in English government.

replaced the older designations. The Tories perpetuated, in large measure, the traditions and opinions of the Cavaliers while the Whigs did the same for the Roundheads, but with this difference that it was no longer necessary to change the monarch in order to change the government. Changing the government now meant getting control of parliament, and to this task both parties now devoted their energies. Their rivalry was transferred from the battlefield to the forum. Paper replaced powder as a means of ascertaining the will of the people. Yet the rivalry of the parties was no less keen than it had been in the age when a clash of arms decided the issues. Through the eighteenth century the Whigs and Tories fought each election as though the destiny of the nation depended on it. First one party succeeded, then the other. The Whigs controlled a majority in the House of Commons during the greater part of William III's reign; then the Tories replaced them for the most part until 1714. Here the alternation came to an end and for the next forty-seven years the Whigs held the mastery without interruption.¹ Toward the end of the eighteenth century the Tories managed to work back into power once more, and from the era of the American Revolution to the eve of the Great Reform Act their hold was almost unshaken.

Since the great reform of parliament in 1832 the alternations in party ascendancy have been more frequent. The old nicknames Tory and Whig were discarded soon after this date and the more designatory appellations of Conservative and Liberal took their place. The Conservatives continued the Tory tradition, but in a somewhat modified form. They were the partisans of the established order and opposed most of the notable reforms which followed one another in quick succession during the years 1832-1835. The Liberals, on the other hand, championed these reforms in government, in industry, and in social welfare.² As time went on, however, the Conservatives softened their conservatism and proceeded to do some reforming on their own account. Under the leadership of Sir Robert Peel they repealed the Corn Laws, for example, thus removing the import duties on grain and definitely commit-

Political parties since the reform of parliament.

¹ This was partly due to the great genius of Walpole as a practical politician. He was prime minister from 1721 to 1742. But it was also due to the misfortune of the Tories who became involved in the two unsuccessful Jacobite rebellions of 1715 and 1745.

² For example, the Factory Act (1833), the Poor Law Act (1834), and the Municipal Corporations Act (1835).

ting the country to the policy of free trade. Incidentally this action split the party wide open, and when the reactionaries once more got the upper hand the free-trade Conservatives were compelled to take refuge in the Liberal camp.

The Victorian era.

It was around the middle of the nineteenth century that English party lines became well defined and consolidated. Conservatives and Liberals joined issue on the great political questions of the period. In general the Conservatives championed the prerogatives of the crown, the powers of the House of Lords, the privileges of the Established Church, the interests of the landowner and the industrial employer, and the cause of British imperialism. They drew their chief strength from the upper social strata of the kingdom, the nobility, the squires and esquires, the country gentlemen, the clergy of the Established Church, and the upper crust of English society in general. The Liberals, on the other hand, drew more largely from that element of the British population which has been compendiously known as the middle class, although they also brought into their ranks many industrial proprietors who had emerged well-to-do from the Industrial Revolution. The Liberal policy was to change existing conditions in government and in industry, both of which had drifted out of touch with the new conditions of life. They put emphasis on human rather than on vested rights. Their economic ideal was freedom of trade, free competition, laissez-faire. They favored the extension of the suffrage and believed that if the worker were duly enrolled as a voter all other things would be added unto him. Fundamentally the difference was that the Conservatives habitually looked upon themselves as the paternal guardians of rights which had become sanctified by tradition, while the Liberals claimed to be the party of individualism, progress, and emancipation.

Disraeli and Gladstone.

It is true, of course, that the actions of the two parties did not always square with these professions. At times the Conservatives found themselves promoting electoral reform while the Liberals opposed it—for example on the question of household suffrage in 1867. Two great opposing leaders came to the front during this period—Benjamin Disraeli and William E. Gladstone. Disraeli, the child of middle-class Jewish parents, began his political career as a reformer but became the idol of the Conservatives. Gladstone, the son of a knight, a graduate of Oxford, was a Tory by inheritance, by temperament, and by early allegiance; but he led the

Liberal party for more than thirty years. Under these two notable leaders all Britain ranged itself into two great camps and the two-party system became firmly entrenched. The defeat of the Conservatives always meant the triumph of the Liberals, and when the Liberals lost an election there was never any doubt as to who had won it. There was no need for coalition ministries, and there were none during the long interval from the close of the Crimean war in 1856 to the opening of the world war in 1914. Nor could a government be for long "in office but not in power," as two Labor governments have been since 1920.

But conditions within the ranks of the two parties, during this long period, were not always serene. A considerable breakdown and realignment took place, for example, in 1886. To understand this episode it is necessary to know something about that ancient troubler in British politics, the Irish question. The task of governing Ireland, as will be shown in a later chapter, has been one of the most persistent and perplexing of all the great problems that the British people have had to deal with. There was an Irish problem in Plantagenet times, and it persisted under the Tudors. It was fanned into flames of rebellion under the Stuarts. The Hanoverians tried to settle it and failed. Or, more accurately, they settled it but found that it would not stay so. Accordingly the Irish question came full-grown into the nineteenth century, and in spite of renewed attempts at settlement during the long Victorian era it was still running strong when the twentieth century hove into view. In one of his whimsical moods the late Samuel M. Crothers suggested that here was one topic that Henry Plantagenet, Charles Stuart, Oliver Cromwell, and Victoria Wettin might chat about absorbingly if they ever chanced to foregather in the Great Beyond. For although separated in their mundane activities by nearly eight centuries they all had taken a hand in this Methuselan bicker.

Ireland entered into a union with England in 1800, giving up her own separate parliament and becoming entitled to approximately one hundred members in the British House of Commons. This union was unpopular in the southern portions of Ireland from the very outset, and these southern constituencies began to elect members of parliament who were pledged to a restoration of Irish home rule. Hence a group of Irish members, calling themselves Nationalists, made their appearance at Westminster and gradually increased in strength as the nineteenth century wore on. Under

The split of
1886.

On the
Irish ques-
tion.

The home
rule issue.

the leadership of Parnell these Nationalists became, during the eighteen-eighties, an aggressive element in the House of Commons. Although a mere handful of seventy or eighty, in a House of nearly seven hundred members, they sometimes held the balance of power. And holding it, they could overturn a ministry at will. In 1885, for example, they utilized their tactical position to overthrow the Gladstone cabinet. A Conservative ministry was then installed, but being even less disposed to grant the concessions which Ireland demanded from England, it also incurred the wrath of the Nationalists and was ousted.

The liberal
defection.

So it became evident that one or the other of the two major parties would have to effect an alliance with the Nationalists, and this the Liberals proceeded to do. Gladstone, in a fateful decision, committed his party to the Irish cause. His action was not dictated by considerations of political strategy alone, for he had become convinced that the Irish cause was a just one. In 1886, therefore, he brought into the House of Commons a bill providing for the reestablishment of a parliament in Dublin. But Gladstone could not carry the whole Liberal party with him on this issue and in the end the Liberal ranks were split asunder. About a hundred Liberal members of parliament bolted the home rule bill, went over to the Conservatives, and defeated the measure, thus forcing Gladstone out of office. This affiliation of Conservatives and Liberal-Unionists (as the seceding Liberals called themselves) became permanent. So did the alliance between the remaining Liberals and the Nationalists. The accession of the Unionists gave the Conservative party a great revival in strength, for among the bolters were many able young parliamentarians. To the same extent it weakened the Liberals, for although they could now count upon the general support of the Nationalists, these Irish members were not always amenable to party discipline.

The new
alignment.

This realignment of 1886 did not, however, destroy the two-party system in parliament. Liberals and Nationalists continued to vote together on important questions of policy; so did Conservatives and Unionists. In the case of the latter the fusion became so complete that the name Conservative fell into disuse and all the members of the party were commonly known as Unionists. Ministers went into office or were cast out on straight party votes; there was no third party holding the balance of power. The Unionists were in power from 1886 to 1892; the Liberals from 1892 to

1895, the Conservatives again from 1895 to 1905, and the Liberals once more after 1905. Under this regular alternation the principle of ministerial responsibility, based upon the two-party system, appeared to be functioning perfectly.

Then came a new turn in affairs, caused by the phenomenal rise of the Labor party. There were Labor members in the House of Commons before 1900, but they did not belong to an organized party. Their numbers were small, and they counted for little. Save in a few constituencies the Labor vote, as such, was not well organized or fully marshalled behind its own candidates. In 1899, however, the British Trade Union Congress directed the appointment of a committee to arrange a conference of the trade unions and the socialist societies for the purpose of devising ways and means of securing an increased number of Labor members in parliament. Out of this action, in 1900, grew a federation of trade unions, coöperative societies, socialist organizations, and other bodies under the name of the Labor Representation Committee. This name, a few years later, was changed to Parliamentary Labor party.

Rise of the
Labor
party.

The work of effecting a thorough organization of the new party was now more vigorously carried on, and at the next general election, in 1906, no fewer than twenty-nine Labor members of one stripe or another, socialist and non-socialist, were successful in obtaining seats. This group perfected a regular parliamentary organization, with its own whips and its own policy. But the Laborists did not yet rank as a third party in the usual sense of the term, for they voted on most occasions with the Liberals. In the country, moreover, Labor remained a loose federation, not a unified popular party. There was an annual congress of delegates representing labor unions, trades councils, socialist societies, and other affiliated organizations, but the congress had not yet become a dominating authority and the local organizations retained a large measure of independence.

Its early
efforts.

From the election of 1906 until the opening of the world war, accordingly, the Labor party did little more than hold its own in parliament. This was in some measure due to the fact that the party became too closely linked up with the Socialists. During these years the strength of the Laborists in the House of Commons was less than fifty votes, but they exerted a much greater influence upon the course of legislation than this figure would indicate.

The decade
preceding
the war.

They were in considerable degree responsible for several measures of social and industrial amelioration which the Liberals put through parliament during the years 1910-1914.¹

Party politics during the war.

Then came the war, and with it a sudden change in the exigencies of British party politics. A Liberal ministry was in power when the conflict began, but it was presently merged into a coalition cabinet representing all parties. The Labor party was given one member in this coalition and during the early years of the war all elements worked in harmony. Political strife was momentarily adjourned, both in parliament and in the country. But it did not remain adjourned until the end of hostilities. Lloyd George replaced Asquith as prime minister, and after this change the old-time Liberals began to lose their strength in the coalition. More Conservatives (Unionists) were called into it and it ultimately became, with the exception of the prime minister and a few others, a Unionist aggregation. Labor then withdrew its participation, and with a considerable body of dissenting Liberals created once more a regular opposition in parliament.

The "khaki election" of 1918.

No general election took place in England during the war. The existing parliament merely prolonged its own existence by passing a statute, thus giving a fine example of parliamentary supremacy. All political parties were agreed upon the wisdom of avoiding the turmoil of an election until the war could be ended. But immediately after the armistice, while the victors were still in high humor, the Lloyd George coalition ministry decided that it was a propitious time for calling the people to the polls. Hence the "khaki election" of December, 1918, was held. It resulted in an overwhelming victory for the coalition of Unionists and Liberals under Lloyd George's titular leadership.

The end of the coalition and the election of 1922.

Very soon, however, the coalition began to disintegrate. That is what party coalitions almost always do after a great victory. In 1922 the Unionists notified Lloyd George that they would no longer support him and as they had formed a large fraction of the coalition's strength he resigned the prime ministership. The Unionist leader, Bonar Law, took his place and advised a dissolution of parliament. In this election campaign of 1922 the Unionists placed before the voters a program of old-fashioned conservatism, the keynote of which was a demand for "tranquillity." Now it is

¹ The old National insurance act, for example, in 1911, and the minimum wage law in the following year.

a rather significant fact that a great war is almost always followed by a "swing to the Right," in other words a reaction against liberalism. People want a recess from excitement and a return to normalcy. An undertow, a revulsion from the idealism of the war period, gets under way.¹ In England the Unionists got the benefit of this, and virtually swept the country. They came through the election with more seats than the Liberals and the Labor party put together. Nevertheless Labor made a surprising gain by more than doubling its quota of members in the House of Commons. It now became the official opposition, while the Liberals went to a place below the gangway.

The new Unionist ministry, although it rode triumphantly into power with a huge majority in its wake, proved to be short-lived.² Like most post-war administrations it was dull and unimaginative. Its prime minister, Bonar Law, a Scottish business man of recognized ability who soon became seriously ill, transferred the premiership to one of his colleagues, Stanley Baldwin. The latter found himself beset by an unusual array of difficult problems, both foreign and domestic. Among them the problem of unemployment was the most serious and in attempting to solve it the Unionists (Conservatives) met their Waterloo. The Baldwin ministry decided that the only way to deal effectively with unemployment was to abandon free trade, to impose a protective tariff, and thus to procure a revival of British industry.

The Unionist ministry of 1923.

Now it is a tradition of English government that when a ministry adopts any marked reversal in policy, for which it holds no mandate from the people, it should present the issue to the voters before attempting to carry the new proposal through parliament. In obedience to this tradition, therefore, another general election was held in 1923. The Conservatives urged the adoption of a tariff on imported manufactured products (but not on foodstuffs) while both the Liberals and the Labor party clung to free trade. The verdict at the polls was against the tariff proposal, but indecisive as regards the forming of a new ministry, for although the Conservatives remained the most numerous single group in the House

Its tactical mistake.

¹ For a further discussion of this topic see the chapter on "The Law of the Pendulum," in the author's *Invisible Government* (New York, 1928), pp. 65-70.

² The term "Unionist" lost most of its original meaning when the Irish Free State was established,—though not entirely so because the Ulster question still remains (see, p. 334). In a general way there is now no essential difference between Unionists and Conservatives, but the tendency is to perpetuate the latter term rather than the former.

of Commons, they no longer possessed a clear majority. The Labor party increased its strength in this election and continued to form the second largest party in the House.¹

Labor takes
the helm.

When the House of Commons assembled after the election of 1923 the Labor leader (Mr. Ramsay MacDonald) offered a resolution declaring that the Baldwin ministry did not possess the confidence of the House. The Liberals joined hands with Labor in supporting this resolution and the Baldwin ministry thereupon resigned. In accordance with the established custom, the leader of the party which had been mainly instrumental in defeating the ministry was then summoned to become prime minister. Mr. Ramsay MacDonald accepted the post, formed a ministry from the Labor party, and proceeded to carry on the administration. His cabinet was seriously handicapped, however, by not having a majority of its own adherents in the House. Being dependent upon the Liberals for every day of its existence, the Labor ministry found itself unable to carry out the promises made in the party's manifesto or platform and hence disappointed many of its followers.

Its action in
office.

The MacDonald ministry, nevertheless, did better than might have been expected under the circumstances. It was dominated by men and women who did not disdain to call themselves Socialists, yet Great Britain experienced no radical departure from the capitalistic system while the Labor ministry remained in office. This was partly due to the fact that the ministry did not control a majority in the House of Commons except by sufferance of the Liberals who were not prepared to support a radical program. But apart from this balance-wheel it became clear that official responsibility has a sobering effect even upon men of socialist inclinations. Politicians always soften their intolerance when they get into power. Conservatives become less reactionary and radicals less radical. In opposition they can propound and advocate theories; but in office they have to deal with realities. So the Labor party, when it took the helm, did not transform England into a socialist commonwealth.

Its fall in
1924.

A ministry in office, but not in power, does not satisfy anybody. This one was not satisfactory to Labor because the party did not have the votes to put its own program through parliament. It

¹ The figures were as follows: Conservatives, 258; Labor, 191; Liberals, 159; Independents, 7; total, 615. The representation of the Labor party in the House of Commons after each election was: 29 members in 1906, 42 in 1910, 57 in 1918, 142 in 1922, and 191 in 1923.

was not satisfactory to the Liberals who merely formed the tail of the Labor kite. And as for the Conservatives, they did not relish the unconstructive job of merely opposing every move that the Labor ministry made. Such a situation could not long endure, but the country had been through two general elections in quick succession and did not want the distraction of a third if it could be avoided. In due course it became apparent, however, that it could not be avoided, and in 1924 the Liberals precipitated the crisis by withdrawing the support which they had been giving the ministry.

The election of 1924 was bitterly contested. The Liberals were forced into the background while Conservatives and Labor fought a pitched battle. The Conservatives, in this campaign, relinquished their demand for a protective tariff and made their appeal to the country by denouncing what they called the pro-bolshevist tendencies of the Labor party as demonstrated by a treaty with the soviet government of Russia which the MacDonald ministry had recently negotiated. Their appeal to the fears of the propertied element and to the partisans of economic stability proved successful. Indeed the Conservatives exceeded their own expectations in 1924 by carrying more seats than the two other parties put together. The Labor party lost considerable ground, but it fared better than the Liberals who now found their ranks in the House of Commons thinned to a mere handful.¹

The Conservatives were once more firmly in the saddle, with Stanley Baldwin again at their head as prime minister. He had an ample majority in the House, a majority so large that his followers flowed over to the opposition benches whenever the green chamber was well filled. For nearly five years the new ministry held itself firmly entrenched but its achievements were of a mottled texture. Some things it did courageously and well—for example, its handling of the general strike in 1926. Other things it did with gross ineptitude—for example, certain of its international negotiations (such as the Geneva conference on naval disarmament) and its unspirited endeavors to solve the unemployment problem. At any rate the Baldwin ministry plodded on until the five-year maximum interval between elections was almost reached; then it advised a dissolution of parliament in the spring of 1929, and the election followed at once.

The election of 1924 and the Unionist victory.

Five years of Stanley Baldwin.

¹ The figures at the election of 1924 were: Conservatives, 412; Labor, 151; Liberals, 40; Independents, 12; total, 615.

The election
of 1929.

The law of the pendulum is continually in play—especially in English politics. The Conservatives, in the campaign of 1929 “stood on their record.” They declared themselves to be the only party which could “provide that continuity of policy and stability of government which the country needs at the present time.” Against this platform of “safety first,” the Labor party presented a program that was surprisingly moderate, disclaiming all intent to use “force, revolution or confiscation” in bringing about a new social order, and declaring its allegiance to “ordered progress by democratic methods,” but calling for a series of important industrial reforms. The Liberals, although vigorously led and well-financed, were not able to command much attention from the electorate whose interest was focussed on the straight cleavage between the two major parties.

Labor
comes in
again.

The outcome was a considerable overturn. The Conservatives lost heavily but remained the largest single group in the House, with Labor a close second and with the Liberals once more holding the balance of power.¹ Thus a Labor ministry again came into office, having first assured itself that the Liberals would probably give support within reasonable bounds. The only alternative was for the Liberals to join hands with the Conservatives which would be a real misalliance. Labor was again in the saddle but without spurs. Again bearing the responsibility, but without an assured majority! Since 1929, however, the MacDonald ministry has managed to hang on, although at times by a slender thread. Its greatest asset has been the disinclination of all parties to face another general election without a breathing spell.

Is a two-
party
system es-
sential in
British gov-
ernment?

The two interludes during which Labor has held the reins of power in Great Britain have thrown much light upon the practical workings of ministerial responsibility and the parliamentary system of government. They have demonstrated the proposition that parliamentary government does not function satisfactorily unless a majority in the House of Commons is willing to accept ministerial leadership. “The cabinet system,” says Sir Courtney Ilbert, “presupposes a party system, and more than that, a two-party system.” Ministerial responsibility without the power to lead is assuredly not an ideal arrangement. It becomes real and effective only to the extent that a majority in the legislative body is willing to be led.

¹ The figures this time were: Conservatives, 289; Labor, 269; Liberals, 58; Independents 8; total, 615.

We are too much inclined to look upon the parliamentary system as one in which the legislature controls the executive. It is more distinctively a system in which the legislature supports the executive. A House of Commons that demands the right to control the ministry without the duty of supporting it is asking too much.

Nevertheless it is undoubtedly true that the mechanism of parliamentary government will keep running when there are more than two strong parties in the legislative body, with no one of them controlling a majority, as witness the experience of continental European countries. Nor is it at all a self-evident proposition that under certain conditions the multiple-party system reaches poorer results than are obtained under the straight two-party alignment. The dependence of a ministry upon several parties, rather than upon a single one, forces it to seek reasonable compromises and to consider all elements in the framing of the laws. This pressure, in the United States, results from the fact that although there are only two parties in Congress the members who belong to the ruling party do not necessarily support the President's policies and the administration is forced to accept compromises as regularly as is the case in countries which have the multiple-party system. It is an aphorism of political science that if government is to be safe against dictatorship, "power must be made a check to power." Under a straight two-party system, with ministerial leadership as in Great Britain, there is no real check to power when one party wins decisively at the polls. The ministry becomes supreme—in administration, in lawmaking, and in finance. It need only sound the call for a vote of confidence; its followers in the House must thereupon swallow their scruples and provide the votes. Ministerial responsibility and the two-party system, when yoked together, make for a firm, strong, quick-acting government, as the history of Great Britain demonstrated during most of the nineteenth century; but the combination may readily be used to make a government too strong, too quick-acting, and lacking in that spirit of compromise which is the essence of a truly representative government.

We must not tacitly assume that there is an insuperable difficulty in making parliamentary government function under a régime of party decentralization. But this can fairly be said, as a deduction from both English and continental European experience, that it functions most smoothly when there are only two strong parties in

The multiple-party plan has some merits.

The future.

the field. If Great Britain must reckon with a permanent division of her electorate into three political parties, no one of which is able regularly to command a majority in the House of Commons (which is by no means a strong probability), this will not necessarily compel any formal change in the mechanism of parliamentary government. But it will at least impose upon the people of Great Britain a scheme of government which in its practical workings and implications is something quite different from what they have had for many generations.

Strange to say, there is no comprehensive history of English political parties from their origin to the present day, and no special treatise which describes the English party system as such. The nearest approaches to an adequate description are the first volume of M. Ostrogorski's *Democracy and the Organization of Political Parties* (revised edition, 2 vols., New York, 1922) and the chapters on the subject in Lowell's *Government of England* (2 vols., New York, 1908).

For various periods, however, and for the individual parties there are books in abundance. Among these are Keith Feiling, *History of the Tory Party, 1640-1714* (London, 1924); T. E. Kebble, *A History of Toryism* (London, 1886); W. Harris, *History of the Radical Party in Parliament* (London, 1885); Maurice Woods, *History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924); F. H. O'Donnell, *History of the Irish Parliamentary Party* (2 vols., London, 1912); H. Fyfe, *The British Liberal Party; an Historical Sketch* (London, 1928); W. L. Blease, *A Short History of English Liberalism* (New York, 1913); Ramsay Muir, *Liberalism and Industry* (London, 1921).

On the principles of the various parties there are numerous volumes, among which may be mentioned: Lord Hugh Cecil, *Conservatism* (London, 1912); Leonard T. Hobhouse, *Liberalism* (London, 1911); C. F. G. Masterman, *The New Liberalism* (London, 1921); Ramsay MacDonald, *A Policy for the Labour Party* (London, 1920); H. Tracey, *The Book of the Labour Party* (2 vols., London, 1928); R. H. Tawney, *The British Labour Movement* (New Haven, 1925); and H. B. Lees Smith, *Encyclopedia of the Labour Movement* (8 vols., London, 1927).

The best concise survey of the subject is the one given in chaps. xx-xxi of F. A. Ogg's *English Government and Politics* (New York, 1929). On the relation of the two-party system to ministerial responsibility there are discussions in G. M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926) and in chap. iv of Ramsay Muir's volume on *How Britain is Governed* (New York, 1929).

CHAPTER XIV

ENGLISH POLITICAL PARTIES: THEIR PROGRAMS, ORGANIZATION, AND METHODS

The British system is perfected party government.—*Woodrow Wilson.*

The English government is builded as a city that is unity in itself, and party is an integral part of the fabric. Party works, therefore, inside, instead of outside, the regular political institutions. In fact, so far as parliament is concerned, the machinery of party and of government are not merely in accord; they are one and the same thing.—*A. Lawrence Lowell.*

Political parties are organized and maintained to bring into actuality the things that they stand for. What do the English parties stand for? Or, more accurately, what do they profess to stand for? From what geographical sections of the kingdom and from what elements of the population do they draw their principal support?

What the English political parties stand for.

Before attempting to answer these questions it may be well to point out that the years of the world war made a serious break in the continuity of party evolution. For four years the parties suspended their conflicts and for seven years Britain had a coalition government. Immediately after the war the Irish Nationalists departed from the House, the Liberal party went into eclipse, and Labor came to the front as a major party in British politics. These great changes have served to mark the year 1914 as a broad line of demarcation in the British party system. It will be necessary, therefore, to speak first of party structure before the war and then to mention the changes that have been wrought during the past couple of decades.

A word of caution.

Another word of admonition may also be advisable in connection with a discussion of party aims and principles. It is this: Nowhere are designations more apt to be misleading than in the vernacular of political parties. We know full well that in the United States the Republicans are not a whit more republican than the Democrats, and that Democrats are not necessarily more democratic than Republicans. To say that Republicans believe in a republican form of government while Democrats believe in democracy would

The confusion of party designations throughout Europe.

be a simpleton's way of differentiating American political parties. In Great Britain before the war the Nationalists were the most democratic of all factions; in republican Germany of to-day the Nationalists are the least democratic. In France the *Action Libérale* is everything but liberal, and the Radical Socialists are the least radical among all factions under the socialist banner.

Liberals and
Conserva-
tives.

So, in Great Britain the Conservatives have not always been conservative, nor have the Liberals always been liberal in their attitude toward public questions. The Conservatives have sometimes championed reforms with the Liberals opposing them. Within the ranks of both these parties there have always been many shades of opinion. In general, of course, men and women who are conservative in temperament incline toward the Conservative party, and people of liberal views have traditionally gravitated into the ranks of Liberalism and of Labor; but the exceptions to this tendency run into the millions. Generalizations as to what "a party stands for" are virtually impossible to make—if one has a care for accuracy. Usually a political party stands, first of all, for getting itself into office and keeping itself there. It stands for itself and its friends. Hence it may stand for one thing in opposition, and for something quite different when in power. Thus it comes to pass that although there may seem to be a good deal of difference between the respective programs of the "ins" and the "outs," there are seldom any drastic reversals of policy when the one party gives way to the other.

Conserva-
tives have
sometimes
been re-
formers.

There have been times when the Conservative party has justified its name, but no one with a knowledge of English political history would contend that it has always been the party of reaction, or of obstruction to progress. Under the leadership of Peel and Disraeli it was militantly progressive, like the Republican party under the ægis of Roosevelt. If you make a list of the various reform acts which parliament has passed during the past eighty years you will find that a very substantial fraction of them were introduced by Conservative ministers. The Conservatives are reformers, asserts one of their leaders, but "cautious and circumspect reformers."¹

Sources of
Conserva-
tive
strength
nowadays.

The personnel of the Conservative (Unionist) party almost inevitably compels it to be cautious and circumspect. Both before and since the war it has included in its membership most of the

¹ Lord Hugh Cecil, *Conservatism* (London, 1912), p. 9.

nobility and the country squires, most clergymen of the Established Church (the parson vote, as it is called) and many ardent churchmen among the laity. It has held in its ranks most of the barristers (lawyers), most of the bankers, virtually all the business imperialists, the world-exploiters, and the militarists. Likewise it has drawn heavily upon the prosperous merchant class and to some extent upon the small landowners and tenantry.

Most university graduates, moreover, have gone into the Conservative ranks. From 1885 to 1918 not a single Liberal member was elected to the House of Commons from any of the British universities. This does not mean, of course, that a university education tends to take the liberalism out of a young man, whether in England or elsewhere. It is merely that the British universities have drawn their students, for the most part, from homes which are traditionally Conservative in their political allegiance. It also means, perhaps, that most of the university graduates go, after graduation, into a social environment where the atmosphere is Conservative, and, that they are naturally influenced by it. At any rate it has sometimes been remarked that many Oxford and Cambridge men who join the Liberal party or the Labor party as undergraduates drift into the Conservative ranks when they grow older and acquire social prominence. The fact seems to be that a university man's political leanings are not determined by the enlightenment (if any) which he derives from the curriculum but are largely influenced by two things, namely, the political affiliation of his parents and the position in life which he acquires after graduation.

The Conservative party has also made a strong appeal to what American politicians designate as "the interests," that is, the industrial corporations, the big income tax payers, and the liquor interest or "the beerage," as this interest is jocularly called. It has also acquired some hold on the middle class, including the small manufacturers, tradesmen, and shopkeepers, although these classes have mainly been mobilized in the ranks of Liberalism. This term "middle class," by the way, although it figures on almost every page of political discussion in England, does not lend itself to precise definition. One writer has defined it as "that portion of the community to which money is the primary condition and the primary instrument of life."¹ Whatever else may be said about

Its appeal to "the interests."

¹ R. H. Gretton, *The English Middle Class* (London, 1917), p. 8.

this definition, it has at least the merit of indefiniteness. Applied to the United States it would not leave much of the population outside its scope. Finally, until the rise of the Labor party, the Conservatives drew into their ranks a large number of mechanics, ordinary wage-earners in the cities, and agricultural laborers in the rural districts. Even yet they have managed to hold a considerable element among the wage-earners, as the size of their vote at each general election proves. In general, therefore, the Conservative party draws from all elements in the British electorate, but its strength lies in the upper ranks of the social and economic scale rather than in the lower.

The Liberal tradition.

The Liberals have been more aggressively, and on the whole more consistently, the party of reform. Liberal leaders protest that reform is a matter of conviction and principle with them, whereas it is only a matter of expediency with the Conservatives.

✓ (The Liberal party is traditionally the party of free trade, laissez-faire, and individualism. It still holds firm to free trade, but it has long since discarded its allegiance to the policy of let-alone. Liberals no longer incline to the old view that free competition will work out a remedy for a nation's ills. They have become authoritarian, as much so as the Conservatives. They no longer shy at laws of an avowedly paternalistic character, as in earlier days. Rather curiously, however, the Liberals are willing to leave commerce alone, but not industry. They balk at protecting the manufacturer by a tariff, but not at protecting the worker by a minimum wage and social insurance. They believe in individualism for the rich and in collectivism for the poor.) This is one of the main reasons for the decline of the Liberal party since the war. Economic and social problems of great urgency have arisen in England since 1918 and the Liberals have had no straight-forward, consistent program to present. They have tried to stand in the middle of the road, and in times of reconstruction there is no logical place for such a party.

Sources of Liberal strength before the war.

(The membership of the Liberal party before the war was drawn from a wide range. It included a substantial proportion of the professional and business classes (though not a majority of them), the bulk of the small shopkeepers and tradesmen in the towns, a fair sprinkling of voters in the agricultural regions of the kingdom, and a large following among the urban workers.) These workers, during the past dozen years, have been almost wholly abducted into

the Labor party. Liberalism, moreover, has always made a special appeal to the Nonconformists,—that is, to clergymen and the more devout lay religionists who are not affiliated with the Established Church.

The backbone of the Labor party's strength is the trade union membership. It includes in its ranks virtually all the unionized workers of Great Britain. It has also absorbed the whole socialist vote although the allegiance of the left-wing socialists, or communists, to the Labor party is rather tenuous. Labor's main numerical strength thus comes from the lower social and economic strata. But its leadership and its intellectual strength comes mainly from higher up. The Labor party has made a considerable draft upon professional men, scholars, and the intelligentsia of Great Britain. Its appeal to the newly-enfranchised women voters, and more especially to the emotional section of this electorate, has been surprisingly strong. It also draws heavily from the membership of the coöperative societies and organizations. To the extent that the Labor program has become less radical the party has reached upward and gained adherents above the heads of the masses.

The Labor party.

In Great Britain, as in the United States, party allegiance is to some extent a matter of geography. Before the war, Scotland and Wales usually went Liberal. To-day the Labor party has acquired great strength in the industrial areas of both these countries. The north of Ireland (Ulster) has always been stanchly Unionist. The south of Ireland would have been Liberal had it not preferred to be Nationalist. In England itself there have been areas with strongly Conservative tendencies and others just as consistently Liberal. In a general way the north of England and the midlands have inclined toward Liberalism; while the south and east have been traditional strongholds of Conservatism. One cannot say, however, that there is a "solid south" in Britain as in the United States. On the other hand the southern part of England is distinctly more Conservative in its attitude and temperament than are the industrial areas north of the River Trent.¹

Party lines and geography.

Now the foregoing paragraphs will seriously mislead the reader if he insists on construing them too literally. For there is hardly a single rule of British party politics that is not open to some important qualifications. "Tell me how a man earns his living and

The danger of generalizing on British parties.

¹ A study of the map printed by E. Krehbiel in the *Geographic Review* for December, 1916, will show how definite this tendency has been.

I will tell you how he votes" is a stock saying among English politicians; but like many unstitched aphorisms of practical politics it seems to have no firm basis in fact. Neither the Conservatives nor the Liberals have had a monopoly of all the voters in any walk of life. It must not be taken for granted that because a man is a peer, or a bishop, or a banker he is necessarily a Conservative. There are peers, bishops, and bankers among the Liberals,—yes, you will even find them in the ranks of the Labor party. On the other hand you will encounter large numbers of Conservatives in overalls, with dinner pails in their hands. Nor should anyone fall into the error of supposing that the Labor party draws its members exclusively from among the horny-handed. On an election day you will find plenty of Labor voters coming to the polls in limousines.

Regulars and non-regulars in the party ranks.

A political party, like an old-time army, is made up of regulars, auxiliaries, volunteers, mercenaries, and camp followers. All but the regulars are liable to desert, in whole or in part, on occasions. The percentage of these "regulars" in the party strength is not so large in Britain as in the United States. The chief reason for this is the fact that in Great Britain the general elections do not usually turn on vague generalities but on fairly concrete and definite proposals. This is a consequence of the British scheme of ministerial responsibility which ensures that general elections ordinarily synchronize with the clash of political parties on some outstanding issue. In the United States, when the time for a general election arrives, it sometimes happens that there is no outstanding issue engaging the public attention. The party leaders then have to rustle around and find one. You can't have an election without issues, and since an election must be held in accordance with the terms of the constitution, the issues must be dug out and framed up somehow.

Looseness of party lines in Britain.

In England this is not what happens, or, at any rate, it can happen but rarely. Over there it is the issue that brings on the election. Until parliament runs its full five-year term there is never a general election unless some great issue makes such an election necessary. With such questions to be decided, however, there may be three general elections in three years, as was the case in 1922-1924. As a result of this difference the party lines are less firmly drawn in Great Britain than in America. The way a man votes is there to a larger extent determined by his own attitude

toward the immediate issue which made the election necessary and to a much less extent by his party allegiance. This is shown by the huge overturns which take place within short spaces of time. At the election of 1923, for example, the Conservatives polled five and a half million votes, at the election of 1924 they obtained nearly eight million.

Between the Conservatives and the Liberals of to-day there is no great difference in political principles. Both favor the continuance of the monarchy and the parliamentary system of government. Both have accepted the British commonwealth of nations as an aggregation to be defended, preserved, and more closely welded together. There was a time when it could be fairly said that the Conservatives were more imperialistic than the Liberals, more belligerent in their foreign policy, and more ardent in extending the far-flung range of British power. This was notably the case during the Disraeli-Gladstone duel of fifty years ago. But if there is now any difference in foreign and colonial policy between the two older parties, it is not discernible to the naked eye. Issues of foreign and colonial policy have tended to become non-partisan. The great objectives remain the same no matter which party is in power. This has been shown during the years that have intervened since the close of the war. During these few years Great Britain has had a coalition ministry with a Liberal at its head, two Conservative ministries, and two Labor ministries. But the main currents of British foreign policy have undergone no substantial change. Before the advent of the first Labor ministry it was freely predicted that a Labor government would make a mess of diplomacy, alienate the dominions, and lower British prestige everywhere. Nothing of the sort has been the outcome. The great body of permanent officials carry on, no matter what ministry is in power. New ministers, when they come into office, can deflect the course of policy somewhat; but sharp reversals and radical overturns are virtually out of the question. All three British parties are committed to support the League of Nations, but the Labor party is probably the most sincere in its support.

For many years the issue of Irish home rule tinctured every British election campaign with animosity and bitterness. But all parties, the Labor party included, have now accepted the Irish Treaty and are pledged to carry out England's part of it. For the moment this convulser of the British political conscience has

Liberals and Conservatives do not differ greatly to-day, because:

1. They agree on the main principles of foreign and colonial policy.

2. The Irish issue is closed for the moment:

taken its departure, although there can be no certainty that it is gone for good. Strongbow settled this Irish question eight hundred years ago, or thought he did. Oliver Cromwell settled it to his own satisfaction, and so did the younger Pitt. But it would not stay settled. Whether Lloyd George has done what Cromwell and Pitt failed to do is something that a future generation of historians will have to write about.

Party differences today:

1. On religious issues.

With a consensus on foreign and colonial policy, and with the Irish problem exiled to its own homeland, the lines of cleavage between Conservatism, Liberalism, and Labor are mainly related to domestic problems. The Conservatives, due to the make-up of their party, are naturally more favorable to the interests of the peerage and the Established Church, while both Liberals and Laborists are more susceptible to middle class, trade union, and Nonconformist influences. This divergence usually shows itself when matters affecting education come before parliament. The Conservatives have a marked friendliness toward the church schools which play a large part in the education of the English youth, and have steadily urged that these schools be generously assisted from the public funds. Both the Liberals and the Labor party, while not insisting that public money shall be entirely withheld from private schools, have been more actively interested in the upbuilding of what Americans call the public school system.¹ They have also been more friendly to vocational and technical education. The Labor party has been especially active in this direction.

2. On fiscal questions.

In fiscal matters both the Labor party and the Liberals still avow themselves to be "unrepentant free traders" although the rest of the world has gone protectionist. The Conservatives have been inclined to feel that whatever may be said of free trade as an ideal, Britain cannot keep her industries going if she lets all other countries freely dump their products upon her. Immediately after the war parliament enacted the Safeguarding of Industries Act which imposed import duties on a number of articles. The apparent success of this move impelled the Conservatives to propose a broader protectionist policy, but at the election of 1923 the voters

¹ A word of warning as to nomenclature should be added here. The term "public schools," as used in England refers to privately-endowed and privately-managed schools such as Eton, Rugby, and Harrow. Schools which correspond to the public schools of the United States are now known as "provided elementary schools." Formerly they were called "board-schools."

failed to approve this proposal and the Conservatives officially dropped it. Many of their leaders still believe, however, that England must abandon free trade as the only way of reviving her industrial prosperity and they are convinced that after all other methods have failed the nation will come around to this conclusion.

As respects the current problems of internal policy—taxation, poor relief, social insurance, and the betterment of industrial conditions—the two older parties, Conservatives and Liberals, are separated by no great gulf. The difference is in tendencies and methods rather than in principles. Between a conservatively-minded Liberal and a liberally-minded Conservative there is not much to choose. Both favor the continuance of industry on an individualist basis and are opposed to the extensive nationalization projects which the Labor party has intermittently advocated. Both are ready to maintain the systems of old age pensions, health insurance, and unemployment insurance which have been established by parliament. There is no great difference between Conservatives and Liberals on these important matters of industrial amelioration except that the former would undertake new remedial measures cautiously and go slow, while the latter are ready to keep moving rapidly ahead. The Liberals during the past few years, in fact, have put forth a program of socio-economic readjustments which carries them further away from the Conservatives and draws them much nearer the Labor party.

The Labor party, a dozen years ago, struck off along new and radical lines. Its program differs from those of the two older parties not merely in tendencies and methods but in basic principles. This program is largely concerned with changes in the industrial order and although still strongly tinged with socialism has been moderated considerably during recent years. It differs radically from the programs of both Liberals and Conservatives in that it proposes ultimately to abolish, and not merely to reform, a good deal of the capitalistic system. Its professed aim is to "secure for every producer his (or her) full share in the fruits of industry" and to bring about the "most equitable distribution of the nation's wealth that may be possible." This it proposes to achieve by "the democratic control of all economic activities." To this end the Labor party demands the nationalization (i.e., government ownership and operation) of railroads, mines, and power plants. It demands the municipal ownership and operation of street rail-

3. On social legislation.

The Labor program.

Socialization on a broad scale.

ways, gas plants, electric plants, and other local utilities. It demands the nationalizing of coal mines and certain other industries. One step at a time and the private capitalist would eventually disappear. Democratic control of industry would be established and surplus wealth would be devoted to the common good.

How it
would be
accom-
plished.

Let one hasten to add, however, that the Labor party does not propose to do all this by violence or confiscation. Everyone whose property is nationalized would be paid just compensation for it. The government would buy him out at a fair price. It would then conduct the enterprises in exactly the same way that it now manages the postal service and the telegraph lines. Thus Labor would usher in the socialist state—without injustice to anyone, they say, and with due adherence to all the forms of law. They would substitute group control for individualist exploitation. The government would expand its functions into the economic field and in the exercise of these functions it would be advised by a national economic committee made up of persons well-versed in the conduct of these government industries.

The "cap-
ital levy" is
now a dor-
mant issue.

For a time the Labor party coquetted with the idea of a "capital levy," in other words the putting of a heavy tax on the accumulated capital of the country. The argument was that England's enormous war debt constituted an intolerable burden upon the nation's productive power and ought to be unloaded at once rather than liquidated by installments over a long period of years. Nearly half of all that Great Britain raises in taxes each year goes to cover interest and repayments on the national debt. Better take from what the nation has saved in the past, pay it off, and be rid of the incubus. This proposition bulked large in the general election campaigns of 1922-1923, but it aroused widespread opposition and now has been quietly dropped from Labor's program. Instead, the Labor leaders have been urging a readjustment of the regular taxes (especially inheritance and income taxes) so that the rich will feel the burden more while the poor will be relieved from it.

The prob-
lem of the
unem-
ployed.

Since the close of the war Britain has been sailing through a dense fog of industrial depression. Nearly a million and a half able-bodied workers have been regularly out of employment and the government has been hard pressed to provide for them—by unemployment insurance benefits, by poor relief allowances (or doles), and by programs of public works such as highways and land reclamations. The cost of assisting or maintaining this great army

of unemployed is stupendous, but no ministry has been able to reduce it appreciably by getting British industries back to their pre-war prosperity. Britain, before 1914, owed her economic strength to foreign markets which took her surplus manufactures and thus kept her workers busy. These markets—in China, India, Russia, and elsewhere—have now been curtailed and the British unemployment problem is the result. The Conservatives believe that only by conserving and developing the home market, through protective duties, can this problem be solved.

What has been said in the foregoing pages will be misleading, however, if it conveys the impression that the Labor party is solidly united on all features of any program. There are two factions in the party, one of them strongly radical, the other much more moderate. The left wing of the party has persistently clamored for the immediate nationalization of all the agencies of production and distribution, while the right wing has held out against undue haste and has contended that the reorganization of British industry must be carried through by gradual stages. Thus far this moderate section of the party has been in control. Its leaders have dominated the two Labor ministries which have been in office. As yet there has been no open rupture between the two factions of the party, but it is by no means certain that they can permanently continue to campaign in amity under the same banner.

The two wings of the Labor party.

If Labor should become firmly seated in the saddle, with a clear majority in the House of Commons, what changes in the structure of English government would it proceed to make? Far-reaching changes in the *industrial* organization there would be, of course, but to what extent would the *political* framework be reconstructed? Some years before the war, when Labor was still a relatively small factor in British politics, Mr. Ramsay MacDonald (later prime minister) set forth the political ideals of his party in an able work entitled *Socialism and Government*.¹ In it he argued for the reconstruction of the cabinet system, the abolition of the House of Lords, and the reduction of the House of Commons to half its present size. But in some of his later writings the Labor leader became much less definite in his program of political reform and contented himself with the suggestion that the whole question be studied by "a really able commission."²

If Labor gets full control.

¹ Published in 1909.

² *A Policy for the Labour Party* (London, 1920), p. 166.

The Webb
plan.

After the war was over, and Labor had become much stronger in English political life, two prominent intellectuals in the party, Sidney and Beatrice Webb, put forth a somewhat more explicit and detailed plan of government reconstruction.¹ There is nothing official about this plan, and it has never been formally accepted by the Labor party. But it has formed a good basis for the discussion of Labor's political aspirations and ought to have more than a passing mention here.

Its chief
features.

Under the Webb plan, Britain would retain the monarchy, not because monarchy is regarded by Labor as a superior form of government but because there is much to be said for letting well enough alone. To propose any form of elective headship would only serve to concentrate discussion on this issue and sidetrack the rest. Monarchy and a socialist state are not irreconcilable. The House of Lords would, of course, be abolished. The House of Commons would be retained as a "political parliament" without much change in its present organization. As a political parliament it would be restricted to the consideration of purely political matters, including the national defense and foreign affairs. There would be a small cabinet responsible to the House of Commons. As at present, it would be headed by a prime minister but would include only five other ministers—for foreign affairs, national defense, justice, India, and the colonies.

The pro-
posed "so-
cial parlia-
ment."

Parallel with the House of Commons there would be a "social parliament" elected from single-member constituencies by the whole adult citizenship for a fixed term of years and not subject to dissolution. This parliament would have complete authority over all economic and social (as distinguished from political) matters, and more particularly it would have control of taxes, schools, poor relief, and all industrial relations. It would have no cabinet responsible to it, but would do its work through standing committees. It would have committees on taxation, health, education, railroads, shipping, mining, and so forth. Each committee would have a chairman who would virtually serve as the minister in charge of the detailed administrative work. Both parliaments, be it noted, would be elected on the same basis.

Neither of the two parliaments, political and social, would be

¹ Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920). Sidney Webb is now Lord Passfield, having been made a peer on the recommendation of the Labor ministry in 1929.

subordinate to the other. Each would be supreme in its own field. Disagreements as to spheres of jurisdiction would be decided by the courts as the interpreters of the constitution. Where a question happened to be both political and social, both parliaments would have to concur in order to obtain action. But all questions of finance and taxation would belong to the social parliament, and in the long run this would inevitably give it the upper hand.¹

Due to the considerable moderation which has taken place in its program during recent years it is altogether unlikely that the Labor party, with the right wing in control, would go so far as the Webb plan proposes. The party's latest official platform does not propose abolition of the House of Lords or indeed any radical reconstruction of the existing political structure. It contents itself with proposals to abolish plural voting (see p. 140), to create regional governing bodies for England, Scotland, and Wales, to purify elections, and to do various other things which in their totality would fall far short of a political revolution. Thus Labor has become a party of reform, not of reconstruction.

The remarkable rise of the Labor party to a position of strength and influence in British politics during the past two decades has been due to a variety of causes, some of which carry lessons that might well be taken to heart by organized labor in America. One of them is the appeal which the Labor party has made to the "white-collar man." It has not rebuffed him from its ranks. On the contrary it has welcomed professional men, educators, even peers,—anyone who accepts its creed. Thus it has drawn into its fold a large number of well-educated men and women, some of whom have been given posts of leadership. The British Labor party has appreciated the fact that brains, as well as numbers, are essential to success in politics.

In the second place the British Labor party has acquired a unifying bond other than a common enemy. It has not spent all its energy in denouncing the ogre of capitalism, in railing at profiteers, and in scenting various conspiracies to enslave the worker. It has produced a program which, whether you like it or not, is at least comprehensive, constructive, and arguably practicable. And it

The Labor program is becoming more conservative.

Some lessons to be drawn from Labor's rapid rise in English politics:

1. Its wide appeal.

2. Its constructive program.

¹ An examination and criticism of the Webb plan, by Professor A. N. Holcombe, may be found in the *Quarterly Journal of Economics*, Vol. XXV, pp. 431-460 (May, 1921).

urges the acceptance of this program, not for the benefit of the organized manual worker alone, but for the advantage of brain workers also—for virtually the whole people and for posterity. It has adopted the language of altruism, and has couched its demands in terms of nationalism and patriotism, not of class warfare. It has gone on the principle that there is a fundamental harmony in all human relations and that the best interests of the wage-earner are not in conflict with those of men who earn their livelihood by using their heads, not their hands.

3. Its spirit of idealism.

Finally, the leaders of the British Labor party have placed their cause before the people on a high spiritual plane. They have not allowed themselves to become wholly absorbed in controversies over the open shop, the standard of living, the minimum wage, the use of injunctions in labor disputes, the eight-hour day, and the yellow-dog contract. Rather they have devoted themselves to voicing the plea of the worker for industrial democracy as a means of elevating his entire plane of life and making him a better craftsman in the new society. In this way they have reached many thousands of generous-minded people, wholly outside the wage-earning ranks, whose emotions naturally impel them toward an ideal that is stated in human terms.

What organized labor in America ought to learn from English political history.

If organized labor in America will study the political history of England during the past half-dozen years it can find some things worthy of adoption. It can learn the desirability of stating its aims in terms of the common good, and not in terms of labor's advantage alone. It can learn that organization is not the sole passport to success, but that leadership, intelligence, and education are desiderata of equal importance. The ranks of organized labor in America contain relatively few well-educated men, and indeed the general attitude has been rather hostile to higher education. The intelligentsia are under suspicion in American labor circles, although for no sound reason. Finally, there may well be learned the lesson of presenting labor's cause to the whole people in the form of a constructive, democratic, spiritual ideal rather than in a series of uncoördinated demands for such specific concessions as the closed shop or the right of peaceful picketing.

Party organization.

Having thus briefly surveyed the history, composition, and programs of the three major political parties in England, it is worth while to add a word concerning their methods of organization and their activities in election campaigns. English political

parties place a good deal of stress upon organization, although by no means so much as is the custom in America. Comparing England and America in this respect one might say that in England leadership counts for more and organization for less than in the United States.

English party organization in the country at large, as distinguished from party organization in parliament, dates from the morrow of the Great Reform Act. Prior to 1832, when the privilege of voting was confined to a very small percentage of the people, when the process of electing a number was so often a mere gesture, there was no need for party organizations among the voters. With the widening of the suffrage, however, and the elimination of the pocket boroughs, it became apparent to the political leaders that success or failure at the polls depended on getting the new voters registered and canvassed. So registration societies were formed all over the kingdom and these gradually developed into full-fledged local party organizations. At the outset the local organizations did not attempt, save in rare instances, to place candidates in nomination. This was left to individual initiative; in other words the candidates came forward of their own volition or were nominated by a few influential members of the party.

Early
methods.

In the course of time, however, the local organizations began to broaden their bounds so as to include all members of the party in the ward, or borough, or county. This step was first taken by the Liberals in the city of Birmingham during the sixties. The Liberals of each Birmingham ward adopted the practice of assembling in caucus and choosing a ward committee which, in time, sent delegates to a central association for the whole city. The general committee of this central association, representing as it did the whole body of Liberal voters in Birmingham, took over the function of nominating the Liberal candidates and promoting their election. In short, the Birmingham Liberals merely adopted the ward caucus and the city convention, thus taking a leaf from the book of practical politics in America.¹

The Bir-
mingham
plan.

The Birmingham plan of party organization proved to be a brilliant success. The Liberals, organized on the American plan, not

Its spread.

¹ The moving spirit in this procedure was Joseph Chamberlain, who was commonly known as the "American mayor" of Birmingham by reason of his having made this office a real center of influence and authority. Chamberlain was very familiar with American party organization and methods, having spent considerable time in the United States.

only swept their entire slate of three candidates into the House of Commons but captured the city council and the school board as well. Naturally this achievement was noted by the Liberals in other cities, and by their Conservative opponents also. Before long, therefore, the Birmingham plan spread over most of England. It did not do this without opposition, however, for many timid-minded leaders in both parties were afraid that it would transplant to Great Britain "all the evils of American machine politics." In this they proved to be mistaken. The use of the caucus and convention in England did not result in the domination of the cities by rings and bosses. Anyhow, when the Liberals adopted this method of organization they left the Conservatives no choice but to accept it also, as a matter of self-defense.

The National Liberal Federation (1877) and the National Conservative Union (1887).

The next step followed logically within a short time. This was the affiliation of the local organizations into a national body. Here, again, the Liberals took the lead by organizing the National Liberal Federation in 1877. It was not intended that this Federation should exercise any control over the local associations or dictate the nominations made by the latter. The avowed purpose of the National Federation was to guide, assist, and inspire the local organizations so that their work might be made more effective. The local Conservative associations remained unfederated for a time, but as the merits of the plan became apparent a National Union of Conservative Associations was similarly organized with the same avowed purposes although on a somewhat different scheme.

Influence of these national bodies.

These two national bodies, the National Federation and the National Union, inevitably became directing factors in the work of their respective parties. Each set up a central office with a paid staff, and these headquarters kept in close touch with the local associations everywhere. Sets of rules and instructions were prepared for the guidance of the local committees, and the local associations were sometimes provided with paid organizers. On the approach of an election campaign the central offices took over the work of raising funds for nation-wide use; they supplied speakers where they were most needed; they even adopted the practice of recommending a candidate in any constituency where no strong local man appeared to be available.

The practice of "recommending" local candidates.

This habit of "recommending" an outsider (usually some one who had worked for the national headquarters in a previous campaign) was not resented by the local organizations. On the

contrary they often asked that a good candidate be recommended to them—preferably one able to conduct a whirlwind campaign and pay for it out of his own pocket. The practice still continues in Great Britain and not a few parliamentarians have made their way into the House of Commons during the past fifty years by the grace of a central recommendation to some fighting-chance constituency in which no local man seemed willing to give battle for the party and pay the price. By this and other means, at any rate, the influence of the central organizations continued to grow apace, and eventually two small groups of party leaders in London were exerting a strong influence upon the work of the local associations everywhere.

Everywhere and always there is a good deal of sham in the make-up of party organizations. This is about equally true of England and the United States. Ostensibly, in both countries, the local committees are chosen by the voters of the party, every voter having a voice in the matter. Ostensibly, also, the party leaders are chosen by the committees and are responsible to them. But the fact is that in both countries, under normal conditions, party committees are self-chosen, self-perpetuating, and not really responsible to anyone. The voters, in nine cases out of ten, merely assent to what has been cut and dried for them by the party leaders. The chief difference between British and American procedure (in the case of local committees) is that in the one case this assent is given at a caucus while in the other it is usually given at a primary.¹

Difference between the theory and practice of party organization.

Both the National Liberal Federation and the National Conservative Union have a great deal of work to do—a good deal more than the national committees of the two major parties in America. They divide this work and apportion it among subcommittees which assume virtually complete responsibility for getting it done. Each of these committees has its own campaign funds and its own corps of workers. But the funds are not usually so ample nor are the paid workers so numerous as in an American election campaign.

The Labor party, since its reconstruction some years ago, does not differ widely in organization from the two older groups. In

Organization of the Labor party.

¹ A caucus is a meeting in which the party voters all come together at the same time. A primary is, as its name implies, a preliminary election; the party voters come to it singly, not en masse. A caucus discusses and votes; a primary affords no opportunity for discussion.

most of the constituencies (although not in all of them) there is a Labor association in which "all producers by hand or brain" are eligible to membership. They become members on payment of a small annual fee. These associations select the Labor candidate in each constituency. At fairly regular intervals a Labor conference or congress of delegates from these associations and from the trade unions is called to frame a party program, and every candidate who seeks election in Labor's name is expected to give his adherence to this program. The Labor party likewise maintains a national executive and a central office in London. From this office the national executive directs the party activities throughout the country. It recommends candidates like the other parties, provides speakers, apportions funds, distributes campaign literature, helps to support the party newspapers, and does most of the work that is performed by a national party headquarters in the United States during a presidential campaign. All in all, the British Labor party is now remarkably well organized,—better, perhaps, than either of the older parties.

The auxiliary organizations.

Much work in the interest of all the parties is performed by auxiliary organizations. The Primrose League, for example, is an active propagandist body in the interest of the Conservative party.¹ There is a Women's National Liberal Federation with a large membership. The Fabian Society, as every reader of socialist literature knows, has rendered great service to the Labor cause. So has the Trades Union Congress which represents the industrial side of the Labor movement. The Independent Labor party, a socialist organization, has likewise served as a powerful agency of Labor propaganda. Other political clubs, leagues, and societies by the hundred are active in all parts of the kingdom. Many of them are primarily social organizations until an election looms on the horizon. Then they plunge into politics until the polls are closed, whereupon they relapse into their social routine once more.

English and American analogies.

It will be seen, therefore, that English and American party organizations have much in common. Both stand in sharp contrast with the forms and practice of party organization in France, Germany, and other continental countries. In both England and America there is a hierarchy of committees, local and national, the latter helping and encouraging (but not openly controlling) the

¹ This league is named in honor of the Conservative leader, Disraeli, whose favorite flower was the primrose.

work of the former. In both countries there are hundreds of leagues, societies, unions, and clubs, which are active in furthering the party cause. In both countries the activities and expenditures of political parties must keep within the bounds laid down by law. The chief difference is that England has fewer professional politicians than the United States, fewer men and women who spend all or most of their time working in the party interest and who expect to be paid for it in some way or other. There are political organizations in England, but no political machines, that is, no organizations which function with the machine-like precision of Tammany Hall. There are no rings or bosses in England as in America. On the other hand there are men who virtually dominate the party organization in individual boroughs, especially the local organizations of the Labor party, and sometimes they come close to being local bosses.

The Labor party has done a good deal to Americanize the politics of Great Britain during the past dozen years. It has taught English politicians the value of strict discipline in the party ranks. It tolerates no insurgency. Those who go before the voters as Labor candidates must first get the endorsement of the party's national executive. Finally, the Labor party has brought into Great Britain the American method of raising campaign funds. It has not depended for sustenance upon a few rich men but has combed the party ranks for small contributions.

Changes
due to the
rise of the
Labor
party.

In addition to the books listed at the close of chapter xiii, mention should be made of R. S. Watson, *The National Liberal Federation* (London, 1907); W. Elliott, *Toryism in the Twentieth Century* (London, 1927); J. M. Gaus, *Great Britain: A Study in Civic Loyalty* (Chicago, 1929), especially chap. vi; Edward Pease, *History of the Fabian Society* (2nd edition, London, 1925); H. Tracey, *The Book of the Labour Party* (2 vols., London, 1925); C. J. H. Hayes, *British Social Politics* (New York, 1913); J. A. Spender, *The Public Life* (2 vols., London, 1927); E. Benn, *If I Were a Labour Leader* (London, 1926); together with the biographies and memoirs of such leading statesmen as Disraeli, Gladstone, Parnell, Rosebery, Campbell-Bannerman, Lord Randolph Churchill, Joseph Chamberlain, Balfour, Asquith, Lloyd George, Baldwin, and MacDonald.

CHAPTER XV

LAW AND THE COURTS

No free man shall be taken, or imprisoned, or ousted from his home, or outlawed, or exiled, or in any way injured; nor will we go upon him, nor will we send upon him, save by the lawful judgment of his peers or by the law of the land. . . . To none will we sell, to none will we deny or delay, right or justice. —*Magna Carta*, Sections 39–40.

Two great
legal sys-
tems.

In the entire history of mankind there have been only two great systems of law, the civil law of Rome and the common law of England. Many other systems have come into existence during the intervening centuries, and some of them remain in operation to-day, but it is not too much to say that the legal fabric of practically the whole civilized world is derived from one or the other of these two great bodies of jurisprudence. The countries of continental Europe, the Latin-American republics, Scotland, and Japan, have followed the civil law of Rome; while England, Ireland, the United States, and the British overseas dominions have based their legal systems upon the common law.¹ Thus one can travel over most of the world to-day without setting foot upon soil that does not render homage to the jurisprudence of England or of Rome. Roman and Saxon differed in many things, but one thing they had in common, a genius for law and government. *Regere imperio populos . . . pacisque imponere morem.*

A general
comparison.

These two great systems of law, Roman and Common, are absolutely unlike, as anyone who undertakes a study of them will soon discover. The Roman law was developed by a people who, although intensely practical in temperament as ancient races went, had a strong penchant for order, symmetry, and uniformity. So they developed a legal system which was above all things coherent and orderly, each part consistent with every other part. The mediæval Englishman was also endowed with a practical turn of

¹ In French Canada, there is a strong infusion of Roman law; and the same is true of Louisiana which was colonized by the French. Roman law also forms the basis of the civil jurisprudence in South Africa. There is a good chapter on "The Spread of Roman and English Law throughout the World" in Lord Bryce, *Studies in History and Jurisprudence* (London, 1901).

mind but he inclined much less to system or consistency. He left his legal system full of knots and kinks and loopholes, or, as lawyers would say, "replete with anomalies and incongruities." The Roman legal system is polished, balanced, rounded, and immobile, while the common law is rough at the edges, devious, casual, and ever changing like the colors of an English sunset.

In a way, therefore, these two systems of law are an elaboration of the words *order* and *progress*, which prefigure two types of national genius. It has sometimes been said that Roman law is like Romanesque architecture in that its impressiveness arises from the proportions of the mass, while the common law is like Gothic architecture, its beauty arising from the variety and perfection of the details. Whether this simile is worth much I cannot say, nor are there many who can, for few men are proficient in both architecture and law. As to the variety and intricacy of detail in the common law, however, any American lawyer can testify. Therein lies its strength—also its exasperation. In other words the common law is not a code like the laws of Solon, or the Twelve Tables or the Code Napoleon, but an organism every molecule of which is undergoing ceaseless decay, renewal, or alteration.

Order and
progress.

What is this common law, about which Blackstone wrote in rhapsody, declaring it to be "the best birthright, the noblest inheritance of mankind"? What is the basis of the old saying that "common law is common sense"? In 1774 the First Continental Congress, meeting in Philadelphia, asserted that Americans were entitled to their common law "by the immutable laws of nature." Why did these sturdy colonials, on the verge of a revolt against England, lay claim to such a heritage? The answer, however brief it be, must carry us a long way back into English legal history.

The com-
mon law of
England.

Even prior to the Norman conquest in 1066 certain legal customs and usages had become *common* to the whole realm of England, or, at any rate to a large part of it. But these unwritten usages were relatively few in number and they were not always clear. From time to time, therefore, they were elucidated or declared by the dooms or ordinances which the king issued at sessions of his Witan. With the arrival of the Normans, and the strengthening of the royal authority, these nation-wide or common usages steadily increased until in time they became both numerous and complicated. When a case came before the royal justices, these judges tried to ascertain the common custom and to apply it.

Its origin
and early
growth.

The decision of one judge was then followed by others, because that was the easiest thing to do, and in this way precedents and the doctrine of *stare decisis* were evolved. Thus there grew up, especially under the early Plantagenet kings, a body of rules which had never been ordained by any monarch or enacted by any legislative body, but which merely represented the crystallization of usages or customs. Nevertheless they were applied with the force of law by the king's judges wherever they went.¹

The commentators:
Glanvil to
Blackstone.

Then came the next step. Commentators began to take this steadily-growing and somewhat elusive body of rules in hand. They arranged them in logical form, elucidated them, added their own comments, and thus gave the common law a better basis for further development. Ranulf Glanvil was the first of these common-law expounders. In the twelfth century he compiled his famous *Tractatus de Legibus et Consuetudines Anglorum*,² a remarkable treatise when one takes into account the difficulties which this pioneer compiler had to overcome. Other jurists continued Glanvil's work. Bracton, about the middle of the thirteenth century, edited a larger commentary with numerous citations from the decisions of the royal courts. Then, as the centuries passed, came Littleton, Fitzherbert, Hale, Coke (pronounced Cook), and, finally, the best known of them all, Sir William Blackstone, whose *Commentaries on the Laws of England* appeared on the eve of the American Revolution.³

Common
law is judge-
made law.

These men were expounders, not makers of the law. They explained the law as it was at the time of writing. Meanwhile the common law kept broadening down from precedent to precedent. It grew by decision and by record, not by enactment. Year after year the decisions of the courts fitted it to new needs and conditions. But it ceased to be *unwritten* law in a strict sense, for its rules and usages, as they grew, were put into written form by the succession of jurists named above. It was unwritten law only in the sense that it did not originate in statutes passed by parliament. It was customary law in that usages supplied its basis. It was judge-made law in that the courts had evolved most of it.

¹ See Sir Frederick Pollock's *Expansion of the Common Law* (London, 1904), pp. 46-50.

² It is the belief of some authorities that the *Tractatus* was not entirely the work of Glanvil but mainly that of his nephew, Hubert Walter.

³ During the past hundred and fifty years the *Commentaries* have passed through numberless editions. No other law book is so widely known throughout the English-speaking world.

Age gives dignity to law as to institutions. The people of England gloried in their common law; they regarded it as a shield and buckler against the royal oppression, which in truth it was. So when Englishmen migrated to America in the seventeenth century they brought the common law with them just as they brought the English language. To them it was an Englishman's heritage, an assurance of his rights wherever he might go. To the colonist it was a body of traditional, fundamental law, the basis of his personal liberties, and not to be changed at the caprice of kings or parliaments.¹ Thus the colonist guarded it as jealously as his flag, and it was the first system of law applied by his courts in the new world. Gaining good root beyond the seas it survived the Revolution, and in forty-seven states of the Union the courts are administering it to-day. What an astonishing survival! Take for example the rule that a father is under legal obligation to provide his children with the necessities of life. When and by whom was that rule ordained? It was never ordained at any time or by anybody. It goes back to the primitive customs of the Saxon tribes.

Its migration to America.

During the past eight or nine hundred years, however, another form of law has been encroaching on the common law—slowly at first, but of late more rapidly. This is statute law, or law enacted by a regular lawmaking body. In Norman and Plantagenet England, as the earlier chapters of this book have already pointed out, the king made laws, first in his great council and later in parliament. And parliament became in time the dominant factor in making the statutes of the realm. To-day, therefore, parliament can change any rule of the common law at discretion, and it does make some changes at almost every session. Year by year statutes are passed by parliament to cover things which the common law has failed to cover, or to clarify its provisions, or to codify them, or to enlarge them, or to vary them, or to repeal certain of them altogether, establishing different rules or principles in their stead. When the common law conflicts with a statute, the statute always prevails. Hence as statutes multiply, the common law is cut into more and more deeply.

Its relation to statutory law.

Nevertheless, the law which the courts of England administer at the present time is for the most part common law. The statutes, numerous though they are, cover a relatively small portion of the

Present status of the common law in England.

¹ See the chapter on "The Fundamental Law" in C. H. McIlwain's *High Court of Parliament* (New Haven, 1910).

entire field.¹ They have dealt mostly with administrative matters and machinery. Most of the underlying rules relating to the rights of the individual are based on common-law principles—such, for example, as the principle that men are under legal obligation to pay their debts, to refrain from injuring the property of others, to keep their contracts, to support their families, to seek redress in the courts and not by their own direct action, to keep the peace, and to be presumed innocent until proved guilty. Whence arose the rule that jurymen should be chosen by lot, that there should be twelve jurors, and that they should reach their verdict in secret? By whom was it enacted that hearsay is not evidence, that a man must not be compelled to incriminate himself, and that an accused shall be given the name of his accuser? These things did not originate in any constitution, charter, or bill of rights. Where was it first decreed that the citizen cannot sue the state without its own consent? Or that a government official who commits an offense, even in his official capacity, is amenable to the ordinary courts of the law? You will search in vain through the acts of parliament for the origin of any of these legal principles, or for a hundred other fundamental ones which, although every citizen now accepts them as self-evident in their virtue, are the very things which differentiate Anglo-American jurisprudence from that of continental European countries.

Common
law and
common
sense.

The purpose of all law is to assure justice. Law is merely a body of rules whose aim is the systematic and regular attainment of that end. The administration of justice is merely the fixed and constant purpose to give every man his due.² To secure this end the law must keep step with social and economic progress—which it often does not. The great merit of the common law is that it represents the survival of the fittest among the various legal customs and rules which successive generations of men have tried. Having stood the test of time and proved themselves well suited to the needs of the modern community, these rules of common law may rightly be looked upon as the embodiment of justice. But people nowadays are often impatient with things that are old, and

¹ The same is true of the United States, although hardly to a like extent. Some states have cut more deeply into the common law than others. In American law schools at least two-thirds of the instruction is devoted to the common law, and only one-third (or less) to statute law and equity.

² Or, as Ulpian puts it: "Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Juris præcepta sunt hæc: honeste vivere, alterum non lædere, suum cuique tribuere." *Digest*, I, Title 1, 10.

want things that are new—in law as in everything else. So parliament and congress are importuned to set aside various rules of the common law, replacing them by statutory provisions. When they get their way, however, the new statutes often serve the interest of justice much less acceptably.

Then there is equity. The courts of England administer, in addition to the rules of common and statute law, a third branch of jurisprudence known as the rules of chancery or equity. These terms convey a very vague, and often a misleading impression to the layman's mind. He reads in the newspapers that an estate is "tied up in chancery" or that somebody has "filed a petition in equity," and both intimations are as Sanskrit to him. Perhaps he has a guess that chancery has something to do with chance, and that equity is derived from *equus*, a horse. But chancery and equity are synonymous terms; they refer to a collateral branch of jurisprudence which runs parallel with the common law and the statutes, with rules administered by the courts in much the same way. The rules of equity are not necessarily more equitable than the rules of common and statute law. Law and equity are alike designed to promote justice; but in somewhat different fields, and by different methods of procedure.

Chancery or equity.

To understand what is meant by chancery, or equity jurisdiction, one must know something about origins, and these go back to early Plantagenet, perhaps even to Norman times. The embryo of modern equity is to be found in the mediæval legal doctrine that the king could do no wrong, but stood above the law, being the source of all law and justice. Being the legal sovereign he might mitigate the rigor of the law in the interest of justice. So whenever it appeared to a suitor in the regular courts that the strict administration of the common law would fail to give him justice, he could petition the king for intervention. He could ask the king to give him some redress that could not be had by bringing a lawsuit.

The origin of chancery.

At first these petitions for royal intervention dealt mainly with situations which the common law did not cover, or covered inadequately, and in which the judges could find no way of redressing an obvious wrong. Or, on occasions, the king was petitioned to redress a miscarriage of justice which resulted from a technicality or an accident or an error in the application of the law. At the outset such requests came to the king infrequently, but as time went on they began to pour in by the hundreds. Naturally so,

for when it became noised abroad that the king would intervene to forestall or redress injustice there were many persons with real or fancied grievances who sought his intervention.

Its early growth.

In the beginning, moreover, the king tried to deal with each petition on its merits, giving the matter his personal attention and sometimes discussing it with his council. But he soon found that if he kept on doing this he would have time for nothing else. So he hit upon the expedient of doing the work by proxy, in other words the plan of referring all such petitions to his chancellor or principal secretary.¹ The chancellor, in these days, was invariably a bishop or other high churchman, and hence might be presumed to have sound ideas as to what constituted justice between man and man. He was commonly referred to as "the keeper of the king's conscience." But even the chancellor eventually found himself overwhelmed with petitions, and in time it became necessary to appoint "masters in chancery" to assist him in his work. Thus there gradually evolved a regular court which came to be known as the court of chancery.

Its evolution into a branch of jurisprudence.

Now every petition presented to the court of chancery was originally supposed to be dealt with on its own individual merits. And so long as petitions were relatively few it was practicable to deal with them in this way. But with the great increase in its business the court of chancery found itself compelled to set up some general rules. No tribunal, when it has a large number of cases to adjudicate, can decide each of them on its own merits without reference to other cases. Sooner or later it finds that the merits of many cases are substantially alike, and hence that they must be decided in the same way, otherwise gross injustice would be done. Every court, no matter what its jurisdiction, inevitably creates a body of precedents which are virtually binding upon itself. So it was with the court of chancery. Precedents, traditions, maxims, rules, and exceptions were evolved one by one until England found herself endowed with that elaborate and intricate branch of jurisprudence which is now known as equity.

The three arms of the law.

By the close of the middle ages, therefore, three branches of jurisprudence had been marked out in England—common law, statute law, and equity. All of it was the law of the land, all of it had its source in the authority of the king. Common law was the usage of the realm as declared by the king's courts; statute law was

¹ The date commonly given for this transfer is 1280.

the work of the king in parliament; equity was the outgrowth of the king's position as the fountain of justice, above the law.

In procedure, also, a distinction between law and equity had grown up, because the court of chancery did not follow the procedure of the law courts, but developed a different system of its own. Incidentally it began encroaching upon the law courts, claiming the right to issue injunctions against persons who tried to seek remedies at law. Thereupon a merry rivalry ensued, and for a time it seemed as if equity might eventually spread itself over the whole field of civil justice, but in the reign of James I equity was fenced back into its own field. The lines of demarcation between common law and equity were not made absolutely clear at this time, however, nor are they clear in all cases to-day. Still, in a general way, every lawyer knows where the law leaves off and where equity begins.

The rivalry of law and equity.

In what cases, then, are the rules of equity applied by the courts to-day? Let it be explained, first of all, that equity has nothing to do with crimes, but only with civil controversies. All criminal cases go to the law courts. In the second place, only a small proportion of civil cases come within the field of equity jurisdiction. Most of them are adequately covered by the rules of common law or by the provisions of statutes and must be determined accordingly. Nevertheless, there are some controversies which are governed exclusively by the rules of equity,—for example, controversies arising out of the administration of a trust by a trustee. And there are some cases in which redress may be sought either at law or in equity as the aggrieved person may prefer. These are known as instances of concurrent jurisdiction. In general, however, equity follows the law, in other words equity does not intervene save in cases where the remedy at law can be shown to be inadequate.¹

What equity is to-day.

The same courts in England (as in the United States) now administer both law and equity. A statutory fusion of the two was provided by the Judicature Act of 1875. The court of chancery and the common law courts were merged into a single high court of

Law and equity are now dispensed by the same courts.

¹ It would be folly to attempt, in a few paragraphs, any statement of what the rules of equity are, how they are administered, and how they supplement the rules of law. Even elementary textbooks on equity run into hundreds of pages, with chapters on trusts, mortgages, perpetuities, liens, fraud, mistake, accident, subrogation, accounting, marshalling of assets, estoppel, specific performance, discovery, injunctions, receiverships, and all sorts of technical matters.

justice. As a matter of convenience, however, the high court was organized in "divisions," and to the chancery division were assigned all matters which were dealt with by the old court of chancery prior to 1875. But the work of the chancery division is not confined to the giving of remedies at equity; it extends to the giving of common-law remedies as well. In a word, there are no longer two competing systems of jurisprudence, but a single system, with two branches which follow somewhat different procedures. Do not misunderstand this paragraph as implying, however, that the rules of law and equity have been combined. Equity is as separate a body of jurisprudence as ever it was. Only the administration of the rules has been merged.

The system
of courts in
general:

This, then, is the jurisprudence that the courts of England administer. Note that it is the courts of England (including Wales), not the courts of Great Britain. There is no system of law applying to the whole kingdom, much less to the entire British empire or commonwealth of nations. There is no one court with final jurisdiction over the whole British empire, although the House of Lords is virtually a supreme court for Great Britain and Northern Ireland, as will be seen later. India, the Irish Free State, and the various dominions, such as Canada and Australia, have their own legal systems, and their own courts, but appeals may sometimes be carried to London where they are heard and determined, as will be later explained, by the judicial committee of the privy council. The only high court that functions throughout the whole British empire is the high court of parliament.

The Judi-
cature Acts.

The present-day organization and procedure of the English courts is only about half a century old. The courts themselves are much older, of course, but they were entirely reconstructed by the Judicature Acts of 1873-1876. Prior to 1873 the judicial organization of England was in a state bordering on chaos, with numerous tribunals possessing special functions, archaic procedure, and overlapping jurisdictions. The general reorganization then brought the higher courts into a unified system with simplified procedure.

The double
hierarchy of
English
courts:

One of the first features of English judicial organization that attracts the attention of an American student is the bifurcation of court business. In the United States the same court usually handles both civil and criminal cases, although the two classes of suits may be assigned to different sittings. The organization of the English courts, on the other hand, is based upon a vertical division

between criminal and civil cases; the same courts do not usually exercise jurisdiction in both fields. A criminal case, it should be explained, is one in which the prosecution is conducted in the name of the crown; a civil case is one in which one private citizen or corporation enters an action against another.¹ One aims to impose punishment for a crime; the other to provide redress for a tort or civil wrong.

In England when a person stands charged with a crime he is brought before one or more justices of the peace, or, in the larger towns, before a stipendary magistrate.² Minor cases are dealt with summarily in these courts, which are known as courts of summary jurisdiction. Appeals may be carried to the court of quarter sessions, which is a county court.³ The court of quarter sessions also deals with cases which are beyond the jurisdiction of the justices but not serious enough to warrant holding the accused for the assizes. If the evidence appears to indicate the commission of a serious offense (such as murder or manslaughter), the prisoner is held for trial at the next assizes. This is the designation of a court which is held periodically in each county, and in each of the larger towns, by a judge of the high court who goes around on circuit and sits with a jury. The assizes, to some extent, deal with civil as well as with criminal cases. For the metropolitan area of London there is a central criminal court, popularly known as the Old Bailey, which is to all intents the assize court for London and sits at least twelve times a year.

1. The criminal courts.

An appeal from these tribunals may be taken on points of law in any criminal case (or, under certain conditions, on questions of fact) to a court of criminal appeal which is made up of judges assigned to it from the king's bench division of the high court of justice. Finally, if the attorney-general gives consent, the defendant in a criminal case may carry his appeal to the House of Lords. The attorney-general does not ordinarily give this permission unless some new or perplexing legal question is raised. The gamut of criminal justice in England, therefore, runs through summary jurisdiction, quarter sessions, assizes, court of criminal appeal, and House of Lords.

Appeals in criminal cases.

¹ It is also possible, of course, for the crown to bring a civil suit against an individual or corporation.

² This official is called a stipendary magistrate because he receives a salary, while justices of the peace do not.

³ Some of the larger towns, however, have courts of quarter sessions of their own.

2. The civil courts.

Civil cases in which no large amounts are involved come up, first of all, in courts which are called county courts, although their jurisdiction does not in any way coincide with the bounds of the counties. These courts sit at frequent intervals in various parts of the district over which they have jurisdiction. They are presided over by judges who are appointed by the lord chancellor from among barristers of at least seven years' standing and may be removed by him. Appeals from these county courts are taken to the high court where they are heard before a bench by two or more justices, and from thence an appeal may be carried to the court of appeals which is the upper chamber of the high court of justice. If the amount involved is sufficiently large, the case comes before the high court in the first instance and does not go to a county court at all.

The high court of justice.

This high court of justice, to which reference has been made in the foregoing paragraphs, is organized in three divisions, namely the chancery division (or court of chancery), the king's bench division, and the division of probate, divorce, and admiralty. Cases come from the county courts to each of these divisions, depending on the nature of the case. Appeals from the three divisions go to the court of appeals,¹ and under certain restrictions may be finally carried to the House of Lords. The usual gamut of civil justice, therefore, is county court, high court, court of appeals, and House of Lords.

The House of Lords as a court.

For Great Britain and Northern Ireland, it will be noted, the House of Lords is virtually the court of last resort. But this, of course, does not mean that the seven hundred members of the House of Lords are expected to hear and determine the technical points of law which are brought up on appeal from the courts of justice. All appeals are heard by seven law lords, namely, the lord chancellor and six lords of appeals in ordinary.² These dignitaries, although members of the House of Lords, need not be hereditary peers. The lord chancellor is the presiding officer of the House and a member of the cabinet. The six lords of appeal (or law lords, as they are more commonly called) hold peerages for life. Invariably they are men of high judicial distinction, eminent judges or lawyers who are made life-peers in order that they may exercise the judicial

¹ The three divisions of the high court, together with the court of appeals, technically form one court known as the supreme court of judicature.

² Other peers who hold, or have held, certain high judicial offices, may sit with them if they choose. See pp. 110-111.

functions which belong to the House as a whole. But these law lords, when in session, constitute for their own purpose the whole House of Lords and are not in any sense a mere committee of it. They give, and do not merely recommend, judgment.

Special attention should be called to one other high tribunal, the judicial committee of the privy council, which is the ultimate court of appeal in cases which come from the courts of India, the Irish Free State, the British dominions and colonies, as well as from the ecclesiastical courts in England.¹ Thus its jurisdiction covers a very wide geographical range. But it is not a court in the ordinary sense of the term. It is made up of the lord chancellor and former lord chancellors, the six law lords already mentioned, the lord president of the privy council and some other members of that body, together with certain judges appointed from the higher courts of India and the dominions—about twenty jurists in all. But the work of the judicial committee is actually performed by the lord chancellor and the six law lords, aided by their overseas colleagues on matters affecting their respective territories. This assistance is indispensable because the appeals which come before the judicial committee involve not only the interpretation of the common law but the application of principles derived from various widely differing legal systems, such as those of India, Hong-kong, French-Canada, and Malta.²

A unique tribunal: the judicial committee of the privy council.

Not being a court the judicial committee of the privy council does not render judgment. It merely recommends to the crown that decisions of the courts in India, Canada, or elsewhere, be confirmed or reversed. Every decision ends with the words: "Their Lordships will therefore humbly advise His Majesty, etc." But since its recommendations are always followed, they are judgments to all intents and purposes. They are always followed by an order-in-council embodying the recommendations in the form of a judgment. Here, again, we have a survival of the ancient principle that the crown is above the law and may set aside judicial decisions. That idea died out in England long ago, and decisions of the regular English courts can no longer be set aside by a royal

Basis of its jurisdiction.

¹ In addition it hears appeals from the courts of the Channel islands, the Isle of Man, and from prize courts in time of war. Prize courts are courts which deal with the condemnation of captured vessels and other property.

² It will be observed that although there are two courts of last resort, the House of Lords and the judicial committee of the privy council, the men who decide the cases are virtually the same in both.

order-in-council. But in India and in the British overseas dominions the doctrine of the crown's judicial supremacy has lived on.

Its procedure.

When, therefore, a suitor is dissatisfied with a decision of the supreme court of Canada, for example, he is in certain cases allowed to "petition His Majesty" for redress. His Majesty, so the theory runs, turns for advice to his privy council, and the privy council refers the issue to its judicial committee. The committee hears the arguments and recommends that the petition be granted or denied. That is the theory of the procedure. But practice has found a shorter cut and the petition goes directly to the judicial committee which in effect pronounces final judgment. There is no appeal from the rulings of the judicial committee, hence it is a supreme court within its own field of jurisdiction. And this domain is one of vast geographical extent. It serves as a tribunal of last resort for more than three hundred million people, scattered all around the world from Bulawayo to Vancouver, from Singapore to the Barbados. It is, in effect, the high court of the British commonwealth of nations.¹

Not all cases can be appealed to it.

Not all cases arising in this vast area, however, can be brought to London on appeal. In the case of Canada, Australia, and South Africa it can be done only when the highest Canadian, Australian, or South African court gives permission. As a matter of practice the supreme court of Canada gives such permission rather freely, while the Australian and South African highest courts normally refuse it. Appeals to London from the decisions of the supreme court of the Irish Free State have caused a good deal of friction, and the Irish authorities have been urgently pressing for an abolition of this appellate jurisdiction, but thus far without success. From India and the colonies no appeal can be brought to London unless leave to bring it has been first obtained from the judicial committee itself. Such leave is hardly ever given in criminal cases; in civil cases it depends on the character and importance of the issues raised. Some cases, however, may be appealed to the judicial committee as a matter of right, that is, they are cases to which the jurisdiction of the committee has been definitely extended by law, and no permission is required to appeal

¹ The judicial committee does not, however, hear and determine controversies arising between different dominions and colonies within the British commonwealth of nations. At the imperial conference of 1930 (see p. 373) it was agreed that a new tribunal should be established for this purpose.

them.¹ The British dominions have desired that this class of appeals be abolished so far as they are concerned, but the home government has not yet shown a willingness to meet their desire.

In the organization and procedure of the English courts there are certain features which ought to have a word of explanation because they are largely responsible for the favorable reputation which these courts enjoy, both at home and abroad. Leading American lawyers and judges have frequently paid tribute to the independence, promptness, and impartiality with which justice is administered by English tribunals. One reason can be found in the position of absolute independence which all the judges of English courts enjoy. They are appointed by the crown and hold office for life. There are no elective judges in England or in any part of the British empire. Even the Irish Free State, in its self-drafted constitution, did not deign to follow the example set by most of the American states. The practice of electing judges inevitably draws the courts into politics and renders them susceptible to political influences. England has done well to preserve the independence of her courts by holding to the principle of an appointive judiciary. Officers of the English courts other than judges—such as sheriffs and clerks—are also appointed, not elected, and have permanence of tenure.

A second characteristic of English judicial administration is its speed. English judicial procedure does not seem at first glance to be simple, and some archaic formalities are still retained in the court room although they seem to serve no useful purpose. Nevertheless everyone knows that cases move far more rapidly in English than in American courts. This is mainly due to the greater discretion which English judges possess in dealing with legal technicalities. And this, again, arises from the absence of rigid constitutional provisions governing the legal rights of the citizen. English courts do not tolerate the pettifogging, dilatory, hair-splitting tactics which lawyers are so freely permitted to use in American halls of justice. The judge rules his court room, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so. Moreover, when appeals are taken, the higher courts never upset the judgments of the lower

Some outstanding features of English judicial organization and procedure:

1. The life tenure of judges.

2. The acceleration of business.

¹ The details are explained in A. Berriedale Keith, *The Constitution, Administration, and Laws of the Empire* (New York, 1924), pp. 29–31.

ones for merely technical errors. They deal with merits, not with quibbles.

3. The higher standards of the legal profession.

Something may also be attributed to higher standards among the members of the legal profession. In England, as has already been mentioned, there are two kinds of lawyers: solicitors and barristers. The solicitor deals directly with the client and prepares the case for trial. But he does not himself present the case in court; he engages a barrister to do this for him. The barrister is a specialist in presenting evidence; his business is to appear in court after everything has been made ready for him. This division of labor results in cases being better prepared and better presented than in America where the same lawyer tries to do both things and usually does neither of them well. To prepare a case requires patient industry, a scrupulous regard for accuracy, and a relish for details,—in a word, the research quality. To present a case effectively requires familiarity with court procedure, quickness of perception, dexterity in questioning—in a word, the argumentative quality. Some lawyers have one quality but not the other. Very few have both.

4. The jury system has not been overburdened in England.

A fourth feature of English judicial administration is the care with which the jury, as an institution, has been safeguarded against abuse. England is the ancestral home of the jury; it was there that the grand jury and the trial jury first became regular agencies of inquiry and adjudication. Both are still used in most of the courts throughout the British empire except the lowest and the highest. In the trial of all serious crimes, and in civil cases involving a substantial issue, a jury trial may be demanded. In all serious criminal cases, moreover, the evidence must first be presented to a grand jury and an indictment returned before the accused can be placed on trial. On the other hand the jury system has not been overworked by extending it to the trial of unimportant civil disputes, thus making jury service a burden which busy citizens seek to evade. The jury system is under fire in the United States because it has been overworked and overburdened. No institution, however good, will stand an unlimited strain without giving way.

5. No manhandling of the witnesses.

But the most impressive thing about the work of an English court is the fairness with which cases are heard and decided. The judges, not the lawyers, determine the pace. Barristers know that the manhandling of witnesses will not be tolerated, and they keep within the bounds of decency. They do not turn the court into a

grill room. It amazes an American lawyer to see a murder trial begun and ended within a week, even when many witnesses are examined. In American courts it often takes that length of time to get the jury chosen. English courts keep abreast of their calendars and thus prevent long delays which are in effect denials of justice. It may be, of course, that this regularity with which the calendars are cleared occasionally spells injustice, but there is less of it than in courts where lawyers have their way.

A final characteristic of the English legal system remains to be noted, for it stands in contrast with what one finds in France, just across the channel. This is the absence of a broad distinction between ordinary law and administrative law, between ordinary courts and administrative courts. In France, as will be seen later, the officers of the government are not amenable to the ordinary courts for certain acts done in their official capacity. For such actions they must be sued, if at all, in special courts known as administrative courts which follow a procedure of their own. The English common law recognizes no distinction between the acts of a government official and those of an ordinary citizen. The only individual who is exempt from the jurisdiction of the regular English courts is the monarch himself. Anybody else, when brought before the English courts, is required to show that his action was within the law, otherwise he becomes personally liable for any injury that he may have done. English jurists have laid great stress upon this right of the citizen to summon public officials before the ordinary courts. They regard it as a right which places their legal system a notch above that of their continental neighbors.

But there is no occasion for an Englishman to harbor a superiority complex on this point. The system of administrative law, as it exists in France, does not deprive the French citizen of any substantial right that a Briton possesses. It is true that the Englishman can bring suit against a public official in the ordinary courts, and may secure an award of damages; but this will not avail him much unless the official is personally able to pay the award, which very often he is not.¹ The Frenchman must bring his suit (under

6. No system of administrative courts in England.

Is this an advantage?

¹ In England a suit for breach of contract may be brought against the crown by means of the procedure known as the "petition of right"; but no action for tort (arising, e.g., from the negligence of a government official) can be brought against the crown.

Although there is no regular system of administrative courts in England or in the United States, there has been a considerable development of administrative law

certain circumstances) in special administrative courts which are provided for the purpose. That may not really be a hardship, for if he obtains an award it is always enforceable, for it is an award against the government, not against the official personally. So, if we regard the matter from the standpoint of what an aggrieved individual can actually obtain in the way of redress against an abuse of power on the part of public officials, the absence of a regular system of administrative law in England (and in the United States) is not necessarily a matter for congratulation. More will be said on this subject, a little later, in describing the judicial system of the French Republic.¹

7. The English concept of unconstitutionality.

An outstanding difference between English and American jurisprudence remains to be noted. The concept of unconstitutionality, with which we are so familiar in the United States, is wholly unknown to the courts of England. No English law is ever declared unconstitutional by the courts, for nothing that parliament does can be set aside by any court, high or low. It matters not that the law is repugnant to the provisions of Magna Carta, the Petition of Right, the Habeas Corpus Act, the Bill of Rights, the Parliament Act, or any other of the so-termed constitutional landmarks. If it has been enacted in good form it stands. Hence when an Englishman says that some action of parliament is unconstitutional he merely implies that it is a departure from some age-old tradition. He does not mean that it is legally invalid or that there is any hope of having it declared so. But acts of the Irish, Indian, or dominion parliaments can be held unconstitutional in true American fashion. This is because the Irish Free State, India, Canada and Australia have limited the powers of their respective legislatures.

8. No formal guarantees of individual liberty.

In America the citizen is accustomed to place a good deal of emphasis upon his constitutional rights,—for example, the right to freedom of speech, freedom of the press, freedom from unreasonable searches and seizures, freedom of worship, and the other rights which are guaranteed to him in the national or state constitutions. The Englishman has no constitutional rights in this sense, none that are beyond the legal authority of parliament to infringe. If parliament were to allow the taking of private property for public use without just compensation, no court would stand between it in both countries. These rules of administrative law are interpreted and applied by various executive departments, bureaus, and boards—generally with the right of appeal to the regular courts.

¹ See ch. xxviii.

and the despoiled citizen. But the Englishman loses nothing by reason of this absence of formal, written guarantees. His rights are securely guarded by the ancient usages and traditions of his government. These traditions and usages are in reality more effective than any set of phrases written on paper. Freedom of speech, freedom of the press, freedom of worship, and the other civil rights have become so deeply ingrained in the national life that parliament, with all its technical omnipotence, dares not abridge them in time of peace.

Of what value are laws without traditions? The written decree does not amount to much unless it has the will and sentiment of the nation behind it. The French constitution of 1791, for example, contained the most iron-clad guarantees for freedom of the press, freedom of conscience, and the right of public meeting. Yet, as Professor Dicey says, "there was never a time in the recorded annals of mankind when each and every one of these rights was so insecure, one might almost say completely nonexistent, as at the height of the French Revolution."¹ The Mexican constitution of to-day contains a bill of rights closely modelled on that of the United States. It is studded with comprehensive guarantees for the rights of the peon. Yet these solemn assurances, as everyone knows, have been chiefly honored in the breach. In the constitution of the United States there is a provision that no citizen shall be deprived of the suffrage on account of race, color, or previous condition of servitude. It illustrates the pertinence of the Latin query: *Quid sunt leges sine moribus?*

The influence of traditions.

There is a certain advantage in having the liberties of the citizen buttressed by custom rather than based upon law. For laws and constitutions must be precise in their terminology. This precision makes them rigid, and when emergencies arise it is found that they either go too far or not far enough. It is exceedingly difficult to frame guarantees of individual liberty in such phraseology that they will amply protect the citizen and yet not become susceptible of abuse. Freedom of speech, and of the press, cannot be defined in unqualified terms. The makers of the new German constitution, as will be seen later, have attempted to solve the problem by guaranteeing each right in broad terms and then adding that exceptions may be made by law. Now that is exactly the English arrangement although it is not so expressed. The fundamental

Customs are better safeguards than laws.

¹ *The Law of the Constitution* (New York, 1889), p. 186.

rights of the citizen are broadly guaranteed by constitutional usage. But parliament may make exceptions to any and all of them when the occasion demands. So the "high court of parliament" is a designation which has not lost its original significance. It is the supreme tribunal which interprets, applies, and modifies these usages upon which the practice of English government relies.

The most useful brief outlines of English legal development are W. M. Geldart, *Elements of English Law* (London, 1912); Edward Jenks, *Short History of the English Law* (Boston, 1912); the same author's *Book of English Law* (London, 1928); and F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915). The historical development of the English courts is explained in A. T. Carter's *History of English Legal Institutions* (London, 1902) and in William S. Holdsworth's *History of English Law* (9 vols., London, 1922-1926), Vol. I. Mention should also be made of the same author's interesting volume entitled *Some Lessons from Our Legal History* (New York, 1928).

The development and organization of the English courts is discussed in A. T. Carter, *History of the English Courts* (London, 1927), while the court procedure, especially in criminal cases, is outlined in G. G. Alexander's *Administration of Justice* (Cambridge, 1915). C. H. McIlwain's *High Court of Parliament and Its Supremacy* (New Haven, 1910) is one of the most valuable books in the field. Brief general discussions of the English judicial system may be found in Lowell's *Government of England*, Vol. I, chaps. lix-lxii; Ogg's *English Government and Politics*, chaps. xxv-xxvi, and Marriott's *Mechanism of the Modern State*, Vol. II, chap. xxii. Two invaluable volumes are A. V. Dicey, *The Law of the Constitution* (New York, 1889) and the same author's *Law and Public Opinion in England* (Oxford, 1914).

CHAPTER XVI

LOCAL AND METROPOLITAN GOVERNMENT

The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities of citizens.—*Blackstone*.

Democracy is said to have an educative value. Its eulogists are fond of asserting that it enlightens the people. But the educative value of a democracy depends very largely upon the nature and spirit of its local institutions. The county, the town, and the parish are potential schools of citizenship, as both England and America have long since discovered. It is in the ward caucus and in the town meeting that people most easily learn the first lessons in the art of governing themselves. Until you learn to govern, or be governed by, your own neighbors it is futile to expect that you can successfully govern people afar off. The complications and difficulties of government increase as the square of the distance. It is for this reason that the tree of liberty is more firmly rooted in English-speaking than in Latin countries. Local institutions in England and in the United States are more truly democratic than in the countries of continental Europe; they stand more firmly upon their own feet, have a greater degree of independence, and contribute more substantially to the political education of the people.

The importance of local institutions.

[The English system of local government is the result of a long historical evolution, for the most part unguided and unplanned.] There were shires, hundreds, townships, and boroughs in Saxon times, each with its own local authorities. After the Norman conquest the shires became counties, the hundreds disappeared, the townships passed for the most part into the hands of feudal lords and became manors, while the boroughs eventually secured their freedom and became chartered municipalities. Meanwhile a new unit of local administration, fostered by the church and virtually taking the place of the old township, came into being and ultimately attained some importance. This was the parish, with its voluntary meeting of the parishioners presided over by the parish priest.¹

A word about origins.

¹ After the Reformation he became known as the parson (person) or rector (regulator) of the parish.

Originally the parish meeting dealt only with church affairs but it gradually acquired some civil functions as well. It was the forerunner of the town meeting in the New England colonies.

Local areas
at the close
of the mid-
dle ages.

At the close of the middle ages there remained, therefore, three principal areas of local government in England,—the county, the borough, and the parish. The administrative work of the county was entrusted to officials known as justices of the peace whose functions were originally those of peace officers but who proved to be convenient authorities for supervising many matters of purely civil administration such as the building of roads and bridges, the maintenance of public order, and the care of the poor. These justices were appointed by the crown. The boroughs or chartered towns, were governed, in the main, by close corporations. Originally all the freemen of the borough had a voice in its government. But the lists of freemen were gradually narrowed until only a very small fraction of the inhabitants were entitled to a share in choosing the borough officials. These officials usually consisted of a mayor, aldermen, and common councillors.

Such, in thumbnail sketch, was the organization of English local government during the Tudor, Stuart, and Hanoverian periods. It came down, practically unaltered, into the nineteenth century. In the course of this long interval much of its earlier democracy was sapped away; but the spirit of local self-government was never wholly extinguished. For years, during the Stuart period, the king ruled without a parliament. There were no parliamentary elections. But there were local elections, as before. In the boroughs and the parishes the freemen and the ratepayers continued to choose their own officers and thus keep alive the spark of English democracy.

Effects of
the Indus-
trial Revo-
lution on
local insti-
tutions.

Until the Industrial Revolution changed the face of England in the closing decades of the eighteenth century this scheme of local government served tolerably well. There was no great popular dissatisfaction with it. But the transformation that was wrought by the coming of the factory system soon rendered it obsolete. New industrial towns grew up, almost overnight. The woolen mills gave many of the older boroughs a new lease of life, doubling and redoubling their populations within a few years.

The crea-
tion of new
local dis-
tricts.

Soon these throbbing centers of industry cried out for better police protection, better roads, better sanitation. They made demands which the old local authorities were unable to meet. So

appeal was made to parliament,—and parliament, instead of replacing the old authorities, merely devised some new administrative machinery and added it on. Local improvement districts were carved out, overlapping boroughs or parts of boroughs. The authorities of these districts undertook the improvement of highways and sanitation which the officials of the boroughs had neglected. Dissatisfaction with the administration of poor relief in the parishes, again, inspired the creation of poor law unions, with elective officers (known as guardians) in charge of them. This practice of multiplying local improvement districts was the most significant feature in the development of English local government during the early years of the nineteenth century. And rather curiously it is also one of the most significant features in the development of American local administration to-day—just a century later.¹

Now all this resulted in a veritable chaos of local areas, authorities, and jurisdictions. There were justices of the peace, overseers, guardians, vestrymen, churchwardens, mayors, aldermen, councilmen, and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates—all levied periodically upon the bewildered taxpayer. In 1883 it was estimated that there were more than twenty-seven thousand different local authorities in England and that eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdictions had become so dense that nobody could find his way through it. Yet parliament was reluctant to take the reform of local government in hand and make a job of it, as the French Assembly had done under similar conditions in 1789. Parliament has always disliked to reconstruct anything from top to bottom at one stroke, for that method is not in accordance with the English tradition of reform by gradual evolution. So, with characteristic caution, it went at the work piecemeal.

A beginning was made with the boroughs because they were the areas most urgently in need of reform. After an elaborate investigation parliament enacted in 1835 the Municipal Corporations Act which gave the boroughs (or cities) of England the general scheme of local government which they retain to-day.² Many years

The chaos
of local
areas.

The era of
reform.

¹ On this point see the author's *Government of the United States* (3rd edition, New York, 1931), chap. xlv.

² The difference between a borough and a city is of no political consequence. Chartered municipalities of whatever size are boroughs; but certain boroughs (by reason of their being the seat of a bishopric, or for some other reason) are entitled to call themselves cities.

later parliament took up the problem of county government. The Local Government Act of 1888 reorganized county administration in England, notably by transferring the administrative powers theretofore exercised by the justices of the peace to elective county councils. Finally, in 1894, came the District and Parish Councils Act which swept away most of the multifarious special districts (such as highway, burial, sanitary, and local improvement districts) and provided for the creation of new, unified, local areas in their place. These new areas are known as urban districts and rural districts.

The three landmarks of reform.

These, then, are the three landmarks of reform in English local government, the Acts of 1835, 1888, and 1894. Between them they completely reconstructed the old municipal system. It need hardly be added, however, that all three of them have been many times amended and that several other important statutes dealing with the various special phases of local government have been put through parliament during the past hundred years.

Local areas today—five of them.

As a result of this prolonged consolidating process there are now five principal areas of local government in England, namely, the county, the borough, the urban district, the rural district, and the parish. The scheme of division may be briefly explained as follows: The whole country is first mapped off into administrative counties. Within these counties are urban and rural districts, the former being more densely populated than the latter. These districts are further divided into urban and rural parishes for the handling of neighborhood affairs. Any area which has received a municipal charter is a borough, and the larger boroughs are known as county boroughs because they virtually form administrative counties by themselves. London, as will be seen later, has a special government of its own.

1. The county:

(a) the historic county

The county is the largest local government division, but the term county is used by Englishmen in two senses. First there are the geographical English counties, descendants of the Saxon shires, with their ancient boundaries still unchanged. There are fifty-two of these geographical counties, but since 1888 they have not served as areas of local administration. But they still form constituencies for the election of members to parliament; they are areas of judicial administration with their sheriffs and justices of the peace; and they are the basis of the English militia organization. Each of these geographical counties has a lord lieutenant whose position

has become altogether honorary, and a sheriff whose duties are also of a rather perfunctory sort. But there is no county council or other governing organ in any of them.

The Local Government Act of 1888 created sixty-two "administrative" counties with somewhat different boundaries.¹ It also created a large number of county boroughs, that is, boroughs which were given the status of counties for administrative purposes. This means that any place having the rank of a county borough is not subject to the jurisdiction of the administrative county within which it is situated.

(b) the "administrative" county.

The administrative county is an incorporated territory, which the geographical county is not. Its governing organ is a county council consisting of a chairman, aldermen, and councillors,—all sitting together. These county councils inherited the multifarious administrative functions which had been performed prior to 1888 by appointive justices of the peace. It was not that these justices had proved themselves inefficient; on the contrary they had done their work reasonably well. But it was felt that their wide range of duties should no longer be entrusted to officials whom the people had no part in choosing.

The governing organ of an administrative county.

The county councillors are directly elected by the voters, one councillor from each of the election districts into which the county is divided. Their term is three years. The suffrage qualifications are the same as those established for municipal elections, as explained in an earlier chapter.² The number of councillors varies according to the population of the county. The second element in the council, namely, the aldermen, are not directly elected by the people but are chosen by the councillors. When the councillors have been elected, they choose one-sixth of their number to be aldermen, in other words if there are sixty councillors, they add ten aldermen to the council. They may choose these aldermen either from their own ranks or from outside. The county aldermen hold office for a double term, that is for six years, but one-half of them retire every three years. Councillors and aldermen sit together in the same body, and as individuals they have the same voting power. The whole council, aldermen and councillors to-

How county councils are organized.

¹ The administrative county of London was also created, making 63 administrative counties in all. In many instances the boundaries of the new administrative counties were made to coincide with those of the older counties, but in some cases they differ considerably.

² See p. 142.

gether, elects a county chairman, usually from its own membership but not necessarily so.

Their
powers.

A county council meets regularly four times a year. Its powers are extensive and varied. It supervises the work of the rural district councils; is responsible for the upkeep of main roads and bridges; has some duties with reference to county policing; maintains asylums, reformatories, industrial schools, and other county buildings; performs various functions in connection with the system of old age pensions; is the chief educational authority for the county; and has power to levy a county rate or tax.¹ Most of its work is done through standing committees, such as committees on education, on public health and housing, on finance, and on old age pensions.

Committees
and county
officials.

The county councils and their committees do not usually concern themselves with the routine work of the county, namely, the questions of general policy. The council as it is more commonly called) is a staff of county officials, chosen by the county council. The council includes a county clerk, treasurer, and councillors are elected by popular vote for (highway construction), health officer, and other officers are divided into wards and ward system.¹ Nomination civil service rules, and (with a few exceptions) are chosen by the council at any time.² In practice, however, they are chosen on their personal and professional merits, and they are never removed on political grounds. The efficiency of county administration in England contrasts rather sharply with its notorious inefficiency and wastefulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English county is entrusted to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year.

In county government there is one other outstanding difference between English and American practice to which attention ought

¹ It should not be understood, however, that the county council has immediate charge of all these things. Its police functions, for example, are performed through a standing joint committee, the members of which are selected in part by the county council and in part by the court of quarter sessions (see *above*, p. 279). This committee is practically independent but depends upon the county council for a portion of its funds.

² The chief exceptions are the health officer, who, if he be a "whole time" official cannot ordinarily be removed except with the consent of the national ministry of health. To remove a county surveyor the consent of the ministry of transport must be obtained if the county council has accepted a grant from that ministry toward the payment of his salary.

to be called American city, even when it grows to metropolitan size, remains a part of the county in which it is located, and the authorities exercise jurisdiction over various matters within city limits. This jurisdiction often includes, for example, building and maintenance of main roads and bridges, the issue of deeds, the upkeep of prisons, and the care of the poor. New York City, for example, has spread itself over the greater portion of five counties, nevertheless its municipalities have been given no county functions to perform. Officials of the five counties keep on exercising jurisdiction within the city limits. Chicago now includes four-fifths of the population of Cook county, yet it still remains part of the latter, the county officials continue to be active in Chicago administration. A good deal of friction and waste results from this overlapping of city and county jurisdiction.

One contrast between English and American methods.

mayor.

Whether than executive leadership is taken out of the county this contrasts very sharply with itself—a county borough in the United States.

Separation of counties and boroughs.

In England the county council maintains a county council, while in the United States the county work, merely enlarging its functions. The county council has eliminated the duplication of functions between the county and the city. The county council has short and the city council has long. The county council has government in the United States, nevertheless it is not regarded as an altogether satisfactory arrangement and a royal commission was recently appointed to study the whole question. Meanwhile a few of the larger American cities (Boston and San Francisco, for example) have adopted a somewhat similar plan, combining municipal and county functions in much the same way.

members of council.

councillors.

Within each administrative county the rural parishes are now grouped into rural districts, each district having a council elected by the voters. These councils deal with certain matters of sanitation, water supply, and public health—the last more particularly. They also have charge of minor roads; they grant certain licenses, and have an assortment of miscellaneous functions. The English rural district corresponds in a general way to the township in the middle western American states. Its importance is gradually diminishing as England ceases to be a rural country.

2. The rural district.

experts.

Whenever any part of an administrative county becomes thickly settled (and hence has special needs in the way of sanitation, water supply, health protection, and the like), the county council has

3. The urban district.

power to organize the area into an ^{tract}. Thereupon the inhabitants elect an urban district made up of at least one councillor for each parish within ^{ict}. There are no aldermen in district councils, but the ^{cts} its own chairman and may choose him from outside ^{membership} if it so desires. The urban district council has ^{of} local powers in matters of minor highways, housing, san ^{public} health, and licensing. Its authority is somewhat ^{lative} than that of a rural district council.

✓ 4. The borough.

This brings us to the organization and work of ^{sh} borough. A borough, or city, is an urban area that ^{ived} a municipal charter. There are more than three hundred in England, ranging from small places with a few thousand to great industrial communities like Manchester and ^{ool}. Their government ~~consists of a single organ, namely, a~~ council (or town council as it is more commonly called) sitting together. The councillors are elected by popular a three-year term. The larger boroughs are divided into nd the councillors are chosen under the ward system.¹ Nor, for the council may be made by any ten qualified voters election is by secret ballot without party designations absence of party designations does not mean, however, that lines are disregarded in borough elections. In most of the boroughs these lines are closely drawn, although not so rigid in national elections. And during the past decade, by reason greatly-increased activity of the Labor party, the municipal paings have become more lively than they used to be.

Borough councils.

The councillors, after election, choose aldermen to the extent one-third of their own number.² They can be chosen from ranks of the councillors or from outside as the council may prefer. When councillors are chosen to be aldermen the vacancies are at a special election. The aldermen hold office for six years ^b with the councillors and have no special privileges. Every member of the council, whether he be a councillor or an alderman, has

¹ As one-third of the councillors retire annually there is a municipal election year. Usually each ward has three, six, or more councillors, of whom one or three are elected or re-elected annually. The ward system has not become dis in England to the extent that this has taken place in America.

² Those aldermen who "hold over," that is, who have three more years also vote in making this choice.

equal vote on all questions. By reason of their longer terms and greater experience, however, the aldermen provide the council with a steadying influence which on the whole has been helpful.

The mayor of an English city is chosen by the council, that is, by the aldermen and councillors sitting together. Here again the council has complete freedom to choose from its own membership or from outside. Sometimes it goes outside, but not usually. The mayor holds office for a single year and may be reelected. He is the presiding officer of the council and is entitled to vote on all questions, but he has no executive authority. He makes no appointments, and the council's resolutions do not need his approval. He has no veto power like the American mayor. His position is largely one of honor and he receives no salary. An allowance is made for official expenses, but it is usually small. It has sometimes been said that a wealthy peer makes an ideal mayor because social rather than executive leadership is what the office demands. All this contrasts very sharply with the office of the mayor in the United States.

The mayor.

In England the council forms the real pivot of city government. There is no division of power between the executive and legislative branches of local administration, for the council is the executive and legislative authority combined. It adopts the by-laws, determines the local tax rate, prepares and votes the budget, appoints all officials, and supervises the work of the municipal departments such as streets, police and fire protections, health, sanitation, and schools. A large part of its work is done through committees. There is the watch committee, for example, which has charge of police, and the education committee in charge of schools. These committees for the most part do not have any final power, but merely transmit their recommendations to the whole council, which makes the ultimate decisions.

Powers of
the council.

Its
committees.

Laymen govern the English city, therefore, even as they control the course of city government in the United States. But with this difference, that in England they work more closely in coöperation with experts and are more amenable to professional advice. The council committee relies on the advice of men who have technical knowledge. One reason for this may be found in the fact that the council is itself responsible for the selection of these men. It appoints the entire administrative staff, including the town clerk, treasurer, chief constable, borough engineer, medical officer of

Laymen
and experts.

health—the heads of departments as we call them in America. These officers are not named by the mayor, as with us, nor are they selected by civil service competition.

How borough officials are chosen.

The council is free to choose whom it will, provided the appointee has the general qualifications laid down by law. When, therefore, a vacancy occurs in one of these positions the appropriate committee of the council receives applications for it. After considering the merits of these applications it recommends to the whole council the applicant who seems best qualified for the post, and this recommendation is practically always accepted. With a few exceptions, moreover, the council can dismiss an official at any time. In other words the administrative officials of English cities are not chosen under civil service rules, as we understand them, nor are they given civil service protection against removal. They are in fact permanent officials, but without any legal guarantee of permanence.

No spoils system.

In other words the council has power to remove officials but virtually never uses this power to serve partisan ends. It has never acquired the sinister habit of treating municipal offices as jobs, as a sort of plunder, to be distributed around among the victors. It is difficult for Englishmen to understand why such a habit has developed in any other country. The permanent officials of an English municipality have security of tenure in the same way that people who hold their jobs in private concerns have it. They are kept in office as long as they show themselves competent. There is no spoils system in English cities because there are no spoils to be divided after an election.

The strongest feature of English city government.

Permanence of tenure makes an official familiar with his work. It enables him to become a specialist in his own department. Hence it is not surprising to find that the influence of the permanent officials upon English municipal administration is both strong and steady. This influence is exerted quietly in the committee rooms and is not apparent to the outsider at all. In other words the English city has the outward form of government by elected laymen but the inward fact of government by appointive officials who have mastered their business. And on the whole this plan has given English cities a high quality of administration. They have not been made the prey of spoilsmen, franchise seekers, and grafting contractors. Scandals have been infrequent, even in the police department where corruption usually makes itself manifest when it

comes. Many Englishmen feared that when the Labor party came into power the standards of municipal administration would be lowered. It was predicted that the Labor councillors would insist on filling the administrative offices with their own friends. But this has not happened. The tradition of permanence remains unchanged.

How much home rule does an English city have? Is it left to manage its affairs in its own way, or is it subject to strict supervision by the national government? These questions can best be answered by pointing out, first of all, that there are two logical methods of dealing with local government, namely, to control it rigidly or to let it alone. The former policy has been pursued in continental European countries (especially in France), while the policy of let alone, or municipal home rule, has been rather generally (but not always) followed in the United States. England comes midway between the two. For a long time the authorities of county, city and parish did about as they pleased, with no supervision from London. But during the past fifty years central control has been steadily developing and to-day there is a great deal of it although by no means so much as in the French Republic or in Italy.

Relation of central to local government in England.

This work of national supervision over local administration is now vested, for the most part, in the hands of six national departments, namely, the ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the electricity commissioners who are attached to the ministry of transport. But various other central departments have some supervisory relations with the local authorities.

How central supervision is exercised.

The way in which most of this central control has developed in England is interesting, and it carries a lesson for the United States where the same process has been begun without a clear realization of where it may end. The growth of central control over local government in England has gone hand in hand with the extension of grants-in-aid, or subsidies from the national treasury. First come the Greeks bearing gifts, in other words, the national government offers to help the counties or cities with part of their expenses. It agrees to pay a portion of what it costs each city to maintain the local police department, for example. Then comes a regular inspection of the police by inspectors of constabulary to see that the national government's contribution is being properly spent. This inspection discloses weak spots and the next step is to provide (as

The process through which this central control of English cities has developed.

was done in the Police Act of 1919) that the central government shall have power to frame and enforce regulations relating to the organization, pay, clothing, pensions, and housing of municipal police. This, in a general way, is the story of national subsidies to state government or local government, always and everywhere. Largesse is the inevitable prelude to inspection, supervision, control, and centralization.

The chief
organs of
supervision.

Among these supervising agencies the ministry of health has the widest range of work, for it inherited in 1919 all the functions of the old local government board, with some new duties added. To-day it has general control over the administration of poor-law relief, the system of social insurance, the audit of accounts in local government areas (except boroughs), the approval of local borrowing in certain instances, and the care of the public health. The home office has surveillance over local police administration and is responsible for the inspection of factories and mines. The board of education, as its name indicates, is concerned with the general oversight of all local schools which are supported by public funds in whole or in part. The ministry of transport has supervisory jurisdiction over tramways or street railways, ferries, docks, and harbors. Gas supply is nominally under the board of trade although most of the control, so far as gas plants operated by the municipal authorities are concerned, is exercised by the ministry of health. Electric lighting comes within the purview of the electricity commissioners. The public works loan board has to do with municipal housing schemes. The ministry of agriculture and fisheries has supervisory powers in relation to markets. And so on. At least a score of national agencies are brought into supervisory relation with local government.

Thus the local authorities have to deal not with one central department but with many. And the amount of supervisory jurisdiction which these several departments possess is not in all cases precisely defined. In some cases two departments share different portions of the same task. The board of trade, for example, has to do with the development of water power, while the ministry of health deals with water supply. This distinction is quite logical, of course, inasmuch as the one is a matter of industry and the other a matter which touches the public health; but the parcelling of jurisdiction in this way is confusing. It differs widely from the principle followed in many of the American states where

the supervision of public utilities has been concentrated in the hands of a single body, commonly called a public utilities commission.

In no case, it should be pointed out, is the work of local administration directly undertaken by these central departments. They merely advise, inspect, regulate, give approval, or withhold approval. The general laws provide, in many instances, that the county, borough, district, or parish authorities may do certain things with the approval of the appropriate national department. They also provide, very frequently, that the central department may make rules and regulations for the guidance of the local authorities. The latter must do the work, but the decision as to whether the work shall be approved rests with some board or office in London. The local authorities often resent this paternalism but there seems to be no way of avoiding it. Under modern conditions it is impracticable to permit complete local discretion in matters affecting public health, poor relief, education, and police protection. These things, from their very nature, must be handled with a certain amount of uniformity throughout the country. It would be folly to let every city make its own health regulations, for example, because disease is no respecter of municipal boundaries. An epidemic in one community is a menace to all its neighbors. The massing of people into great cities is bound to bring some centralized control, no matter how strong the tradition of local self-government may be. It is doing this in the United States as well as in England.

Extent to which supervision is applied.

But the growth of central control in England has taken a different course from that which it is beginning to follow in America. Central control over local government in England is *administrative* in character and extremely flexible. In the United States we are making it *legislative*, and hence more rigid. The English plan is to provide that some central board or bureau shall determine whether local authorities shall do this or that. The American plan is to settle the matter by law, not by leaving it to official discretion. And of course the discretion of a board or official is more elastic than the provisions of a law can possibly be. When a law, for example, provides that all county commissioners shall establish and maintain public hospitals, it gives them no leeway. It treats all alike, which is in keeping with the American theory of "a government of laws, not of men." But the fact is that all counties are not alike

English and American methods of centralized control compared.

in their size, needs, or problems. To treat them alike means injustice to some. In England, under the policy of administrative control, they are not made subject to uniform rules laid down by law. The requirements are adapted to each individual case by means of administrative discretion.¹

An illustration: municipal borrowing in the United States.

The essential difference between English and American methods of central control over local government may be made clearer, perhaps, by a couple of illustrations. Take the matter of municipal borrowing. Many of the American states have fixed limits on the amount of indebtedness that cities may incur. Some of them have put these limits in their state constitutions; others have established them by state law. In either case the usual provision is that a city may borrow up to a certain percentage of its assessed valuation and no more. It may borrow as it pleases up to this point, without getting the consent of any state authority. But when it reaches the limit it must stop. This, of course, is a clumsy and inflexible way of keeping cities from going too far into debt. It makes borrowing too easy until the limit is reached; then it makes borrowing almost impossible.² The result is that some cities have wasted their borrowing power on unessential things and have then been forced to do without desirable improvements when the limit has been reached.

No municipal debt-limits in England.

Now in England when a city wants to borrow money it does not have to reckon with any fixed debt-limit. It cannot borrow a single shilling by issuing bonds until it has first obtained approval, either from parliament by special act, or from the appropriate central department. In most cases the approval must be had from the ministry of health. Application to borrow is made by the local authorities, whereupon the officials of the ministry investigate not only the financial resources of the city but the merits of the particular proposal. After the investigation has been concluded, a report is made and the central authorities then approve or disapprove the application.

Another illustration: municipal ownership.

Take another illustration. In America the laws of some states allow cities to own and operate public utilities such as gas plants, electric lighting plants, and street railways. In other states the laws do not permit this, or at any rate make it extremely difficult

¹ We have recently had a very significant exemplification of this principle, involving a wide departure from the American government-of-laws-not-of-men theory, in the flexible provision of the Smoot-Hawley tariff, passed by Congress in 1930.

² Not altogether impossible, because constitutional or statutory debt limits are sometimes lifted when the cities get up to them.

for cities to embark on any such commercial venture. These legal restrictions make no allowance for the fact that some cities may have good reason for embarking on a policy of municipal ownership while others have not. In England the system is much more flexible because the laws merely provide that municipalities may own and operate their public utilities, or may extend those that they already own, provided in each case that the consent of the appropriate national department is first obtained.

The advantages of administrative supervision, as compared with legislative control, are beyond question. The former is much more effective in achieving the desired end. It saves the time of the lawmaking body. But it would not be practicable, on any broad scale, under the American plan of government. A system of administrative control postulates the responsibility of the administration to the legislature. In England it is responsible, for all the central departments are the agents of parliament and accountable to it. But in the United States the administrative authorities are not the agents of the legislature and are not responsible to it. Most of them are appointed by the governor, who, in turn, is not under the legislature's control. The state legislatures have no responsible agencies to whom they can delegate powers and from whom they can exact a continuous responsibility. For that reason American state legislatures have kept the supervision of local government in their own hands, and have exercised it in the only way open to them, namely, by enacting laws. The English system of administrative supervision has been widely praised, and it is deserving of praise; but it would not be workable in the United States so long as we hold to the system of checks and balances upon which the whole structure of American government is built.

Writers speak of the English "system" of central control, but it can hardly be called a system. It is not systematic. It has no uniformity. It has grown by accretion. From time to time it has been partially reorganized and some of the twists taken out of it; but it has none of the coherence that marks the French system, for example.¹ It embodies no rigid philosophy of government. The

Why the English plan would not be practicable in the United States.

A concluding word on the English practice of central supervision.

¹ See *below*, chapter xxix. It ought to be mentioned that the description of local institutions, given in the foregoing pages, does not apply to Scotland and Ireland. They have their own areas and organs of local government which differ considerably in detail, but not in general arrangement, from those of England. The same is true of India and the overseas dominions, the differences in these cases being much more extensive.

English habit has been to let things alone until they can be let alone no longer, then to make no more repairs than are urgently required. Local self-government is a strong tradition in England, and Englishmen have a deep respect for their own traditions; but they are also a practical people and do not let sentiment stand too much in the path of progress. To use a homely metaphor they do not tear down the old house and build a new one with all modern conveniences. They merely patch the roof, repair cracks in the walls, add a wing here or a gable there, put in an extra window, close up an unused door—and so on, decade after decade, until not much semblance of the old structure remains. Far better, one might say, to demolish and rebuild all at once—but that is not the English way.

THE GOVERNMENT OF LONDON

The three
Londons.

Something should be said about the government of London, for this world metropolis has bulked large in English political life for nearly a thousand years. But what is London? The average American is confused, as well he may be, when he reads that the city of London had a population of 13,700 at the last census. This statement is literally correct, but of no real consequence because the "city" is only a very small part of London. The county of London contains five million people, while the London metropolitan police district contains more than seven million. It is metropolitan London that runs neck and neck with New York for leadership among the world's great cities.

The city of
London.

The city of London is merely the ancient core of the modern leviathan, occupying an area of about one square mile. It is the municipal entity which began as a Celtic town and became successively a Roman *civitas*, a Saxon borough, a Norman city. It has remained a "city" to this day—with its old boundaries virtually unchanged and its old type of municipal government largely unaltered. (Its area is occupied by banks, warehouses, and public buildings. That explains why it has a resident or "night" population of only thirteen thousand. In the day hours, however, its streets are thronged by hundreds of thousands who come into the city to do business.

The satel-
lites of the
old city.

Around this historic municipality there grew up, in the course of time, a number of satellite communities which were organized as parishes, each with its own government. Eventually there were

more than a hundred of these parishes, together with the city of Westminster, all solidly built up and forming a great circle. This was the situation in 1888 when parliament was asked to intervene and consolidate the whole metropolis. This it did by creating the administrative county of London with an area of about 117 square miles. Provision was made for a county council with extensive powers to serve as the chief governing organ of this administrative county. A little later the county of London was divided into metropolitan boroughs, each having a limited range of local self-government. When an Englishman speaks of the government of London without any qualifying adjective, it is usually this county government that he has in mind.

The administrative county of London.

Finally, there is the London metropolitan police district, often called Greater London, which covers about 700 square miles.¹ It is not a regular municipality but a district for police purposes only. It has no elective governing officials and its inhabitants do not constitute a municipal corporation. Yet people usually call themselves Londoners if they live within this district, and when comparisons are made with other great centers of urban population this is the area used.

Metro-politan London.

The city of London is a corporation made up of the freemen of the city; that is, of ratepayers who pay a fee of one guinea for the privilege of having their names inscribed on the roll of freemen.² Only freemen have the right to vote at city elections; but the qualifications for voting at parliamentary elections are the same as in other English cities. The corporation, or body of freemen, governs the city through a lord mayor and three councils (or courts, as they are officially called); namely, the court of aldermen, the court of common council, and the court of common hall.

How the "city" is governed.

To explain how these three councils are organized, and what their respective powers are, would take more space than can be allotted here.³ Suffice it to say that both aldermen and common councillors are elected by wards, while the court of common hall is a sort of town meeting. Most of the power rests with the common council, which manages all the municipal services through its committees; but the lord mayor of London is chosen by the court of

¹ This, after all, is not such a vast area. Los Angeles, for example, has more than 400 square miles within her municipal limits.

² A guinea is twenty-one shillings—about five dollars.

³ For the details see the author's *Government of European Cities* (revised edition, New York, 1927), chap. ix.

common hall from among the senior aldermen who have served as sheriff.

The lord
mayor of
London.

The lord mayor of London has no independent powers. His office is purely an honorary one. He appoints no city officials and performs no executive functions. He merely presides at meetings of the three councils and represents the city on occasions of ceremony. At his own expense he provides a stately banquet and a gorgeous pageant—the one for the dignitaries of the city and the other for the people. He is always knighted by the king during his term, if he has not already attained that rank. The salary attached to the office is generous (ten thousand pounds a year), but all of it, and more, goes for official entertainments.

Efficiency
of the city's
govern-
ment.

A curious anachronism is this government of the city, with its strange trappings of mediævalism. Here is a little square in the great chessboard of metropolitan London retaining its quaint panorama of one-guinea freemen and five-guinea liverymen altogether defiant of modern municipal democracy. Yet the city is well governed. There is nothing mediæval about its public services. Naturally its tax rate is low because the assessable value of the place is enormous. Its people seem to be satisfied. On the other hand the existence of this hoary relic in the center of Greater London is a thorn in the flesh of many reformers. They regard it as a sort of canker at the heart of the county. Naturally they do not like to see the richest square mile of territory in Europe contributing nothing to the cost of county government but spending its local taxes within its own boundaries.

How the
county of
London is
governed.

The administrative county of London is governed by a county council which consists of 124 elective councillors (two from each of the sixty parliamentary constituencies of the county and four from the city), together with twenty aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections. The aldermen are chosen by the councillors, either from within their own ranks or from outside, and serve for six years, but half of them retire triennially.¹ Thus the total membership of the London County Council is 144. The councillors and aldermen sit together and have the same voting power. Together they elect each year a chairman of the council and may choose him from outside the council's membership, in which

¹ When aldermen are chosen from among councillors this leaves vacancies to be filled by special elections.

case the total becomes 145. The practice has been to elect a new chairman each year, and as a rule the choice has been made from within the council's membership.

Save for a lull during the war, the London County Council elections have been stubbornly contested. There are three political parties in London politics. They call themselves Municipal Reformers, Progressives, and Labor, but they are virtually branches of the three national organizations. The Municipal Reformers in London are largely Conservatives (Unionists) in national politics; the Progressives are mostly Liberals. It is sometimes said that the national parties, as such, do not figure in London elections, and in a narrow sense that is true; at any rate it was true until the rise of the Labor party. But in a broad sense the national party lines have always held fairly well in London elections, and in recent years they have been considerably tightened. To-day the identification of national and local party lines is about as close as in New York or Chicago.

Council
elections.

The powers given to the London County Council are extensive in scope. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries, and bridges (except those in the city). It has charge of those street improvements which are metropolitan in character; although these are usually undertaken under special power conferred by parliament in each instance, as was done in the construction of the Kingsway. But the maintenance and improvement of the regular London thoroughfares (with the exception of the Thames Embankment), are not within its jurisdiction. Subject to the approval of the ministry of health the council may make public health regulations, but the enforcement of these regulations is left largely to the authorities of the metropolitan boroughs (see p. 308). The council has large powers with respect to the construction and operation of street railways, powers which it has freely used. It has undertaken several great rehousing schemes, involving the demolition of slum areas and the erection of workmen's dwellings. It is responsible for the maintenance of the larger London parks (except crown parks) and for providing public recreation. It has comprehensive functions in the matter of education, including elementary, secondary, and technical schools. Finally, the council has a long list of miscellaneous work to do—such as the licensing of theaters, the regulation and inspection of lodging houses, the administration of the building

Powers of
the L.C.C.

laws, and the maintenance of various institutions for the unfortunate.

Its revenue. To do all this work takes money, and the council obtains its revenue from three principal sources. The national government contributes grants-in-aid or subsidies toward the cost of certain services. Some income is derived from tolls, rents, fees, and payments of various kinds. But the bulk of the council's revenue comes from rates, or local taxes. These rates are always levied by precepts or warrants from the various metropolitan borough councils. In other words a single rate is levied for both county and borough purposes, the county council and the borough councils each getting their share of the proceeds. For permanent improvements it is given power to borrow money, usually by special acts of parliament.

The county chairman and the permanent officials.

The administrative county of London has no mayor and no official corresponding to a mayor. The county council has a chairman but he is not an executive officer. He presides at council meetings but has no other powers. The council itself is the executive authority. But since executive functions obviously cannot be performed by a body of 144 members, they are delegated by the council to its eighteen committees and these committees, in their turn, devolve a large part of the work on the permanent officials. The county's staff of permanent officials is a very large one, and until a few years ago all of its members were appointed by the council at its discretion. The higher officials continue to be so appointed, but the subordinate officials are now chosen by civil service competition.

Metropolitan boroughs.

Mention has been made of the metropolitan borough councils which share in the work of London government. The administrative county of London is a federation of boroughs. In 1888, when the county was created, there were more than a hundred parishes and districts within its bounds, each with a vestry or small elective board which was vainly trying to cope with problems that had grown too big for it. Everybody appreciated the need for consolidating these small areas into large ones, but not until 1899 did parliament agree upon the details of a plan. In that year it passed the London Government Act by which all the territory comprised within the county (but not including the city) was organized into twenty-eight metropolitan boroughs. These metropolitan boroughs are very unequal in size because an attempt was made to follow the traditional parish boundaries. Each borough has a local

government consisting of mayor, aldermen, and councillors, all sitting together to form a borough council. The councillors are elected by the borough voters, the aldermen and the mayor by the council. The qualifications for voting, the procedure in nominations and elections, and the other incidents of organization, are almost identical with those in vogue in the ordinary boroughs of the country. Borough elections are fought out upon party lines which coincide with those of county elections, the chief contests during the last dozen years being waged between Labor candidates and their opponents.

In the extent of their powers, metropolitan borough councils are more limited than the councils of ordinary cities. In general they have charge of local street-building, paving, lighting, and cleaning. The borough councils also undertake the construction and maintenance of subsidiary sewers and the enforcement of health regulations. They are authorized to erect workmen's dwellings, and some of them have gone into this enterprise on a considerable scale. They have charge of public baths and washhouses; they look after the public libraries, and control the local cemeteries. The borough councils likewise have power to own and operate electric lighting plants and more than half of them have taken advantage of this opportunity. With the approval of the ministry of health other powers may be transferred to the borough councils from the county council, or vice versa. But as both have been reluctant to give up anything, very little transferring of power has taken place either way.

Their
powers.

On the whole, the system of metropolitan borough government has worked fairly well, although in recent years it has been harshly criticized from various quarters. There has been some extravagance, considerable grumbling by taxpayers, and some lowering in the general standards of administration. This is due, in all probability, to a number of factors, such as the division of responsibility between the county and borough councils, the difficulty of arousing an active civic spirit in communities which are merely small blocks in a gigantic chessboard, and the absence of a sufficiently mixed population. In elucidation of this last statement it should be explained that some of the boroughs are solidly peopled by Londoners of the poorer class while others are almost as solidly well-to-do. Complaint is made that the poor boroughs need many things which they cannot afford, while the rich ones have larger

How the
system
works.

financial resources than they require. Hence it has been urged that the whole taxpaying power of the metropolitan boroughs should somehow be pooled and the results distributed fairly.

The metro-
politan
police dis-
trict.

The county council and the borough councils have nothing to do with the policing of London, but the city has its own police. For the great circle surrounding the city there is a metropolitan police system. The metropolitan police district includes the whole of the county of London and parts of several other counties. At the head of the district is a police commissioner who is appointed by the crown. He is not chosen for any definite term but holds office during the pleasure of the home office. He has three assistant commissioners, appointed like himself. The metropolitan police force now consists of over 20,000 men of all ranks, thus making it the largest police force in the world. But the cost of maintaining this huge establishment is considerably less than the amount spent upon the police department of New York City, which is only about half as large. The commissioner has entire charge of organization and discipline; but the financial administration of the force is entrusted to a receiver, appointed by the crown, who is responsible for the erection and management of all police stations, the awarding of contracts, the purchase of supplies, and for all other matters outside the actual work of preserving law and order.

These, then, are the chief authorities who govern the three Londons. But only the chief ones: there are literally dozens of others with all sorts of powers and functions. In point of importance the county council stands first, but the metropolitan borough councils are by no means to be disregarded and their work comes even closer, perhaps, to the convenience of the citizens. Among urban governments the world over, that of London is by far the most complicated. In its profusion of authorities and jurisdictions the English capital far outmatches New York, Paris, and Berlin. But London is an amazing community (one Englishman out of every six is a Londoner) and one should hardly expect to find its government simple.

The most useful source of information on all phases of English local government is the volume containing Part i of the *Minutes of Evidence Taken before the Royal Commission on Local Government* (Parts i-xii, London, 1923-1928). This volume of over two hundred pages embodies a large

amount of data, both historical and descriptive, and is invaluable to serious students of the subject.

Among general books on the subject, mention may be made of Sidney and Beatrice Webb, *English Local Government* (6 vols., London, 1906-1922), which is largely a historical survey; Josef Redlich and F. W. Hirst, *Local Government in England* (2 vols., London, 1903); H. E. Smith, *Municipal and Local Government Law* (London, 1923); E. S. Griffith, *The Modern Development of City Government in the United States* (2 vols., London, 1927); C. H. Carter, *The Local Government Act, 1888* (London, 1924); and John J. Clarke's *Local Government of the United Kingdom* (5th edition, London, 1929). This last-named volume contains (in its appendix) an excellent classified bibliography with references to the best books on all branches of British local administration. A useful work for reference on special topics is J. Scholefield's *Encyclopedia of Local Government Law* (9 vols., London, 1905-1923). Mention should also be made of E. D. Simon, *A City Council from Within* (London, 1926). A full discussion of English city government may be found in W. B. Munro, *The Government of European Cities* (revised edition, New York, 1927) with a full bibliography. G. D. H. Cole's volume on *The Future of Local Government* (London, 1921) sets forth a plan for a complete reconstruction of the existing system.

The most convenient source of information concerning the government of the British metropolis is P. A. Harris, *London and Its Government* (London, 1913). But mention may also be made of Sir Aston Webb's *London of the Future* (New York, 1921). A. J. Glasspool, *The Corporation of the City of London* (London, 1924) explains the government of the city. Much interesting material is contained in the *Annual Reports* of the London County Council and in the *Report of the Commissioners Appointed to Inquire into the Local Government of Greater London* (London, 1923). The volumes containing the *Minutes of Evidence*, Parts i-vii, taken by this commission are also available, and they form a storehouse of material which even the most diligent student of the subject can hardly hope to exhaust.

CHAPTER XVII .

SCOTLAND AND IRELAND

My poor opinion is that the closest connection between Great Britain and Ireland is essential to the well-being, I had almost said, to the very being of the two kingdoms. At bottom, Ireland has no other choice, I mean no other rational choice.—*Edmund Burke.*

SCOTLAND

The begin-
nings of
Scotland.

Scotland, like England, was populated by Celtic tribes when the Romans first landed on the shores of Britain. But the Roman legions never pushed their way into the northern sections of the island and Scotland never became a part of the great Latin empire. Nor did the Saxons, when they came to Britain from across the waters, succeed in conquering all of Scotland. The Scottish highlands continued to be inhabited by people of the Celtic race, although some Saxons worked their way into the lowlands which constituted the southern part of the country. The various tribes or clans of Scotland gradually became united under a monarchy with its capital at Edinburgh. In due course, moreover, parliamentary institutions were developed, not widely different from those of England.¹

Scotland in
the middle
ages.

Even before the Norman conquest the Saxon kings of England claimed a shadowy protectorate over the kingdom of the Scots, but this claim was never enforced. The Normans, when they came, left Scotland alone, but in 1286 Edward I of England undertook to settle a dispute which was then raging in Scotland concerning the succession to the Scottish throne. This precipitated a quarrel, and Edward invaded Scotland. His invasion was successful and Scotland passed for the moment under the English crown. This control

¹ Wales is commonly called a "principality" but for all governmental purposes it is united with England. Edward I, in 1284, formally annexed Wales, but the indigenous Welsh institutions were left in existence for the time being, although English law and legal procedure were partially introduced. It was not until 1535 that Wales was given representation in the House of Commons. Two centuries later (1747) it was made a rule that the mention of England in an act of parliament should be taken to include Wales. The title Prince of Wales is borne by the king's eldest son; but it gives him no political authority.

was of short duration, however, for England presently became involved in a war with France and the Scots took advantage of the occasion to throw off the English suzerainty. After a protracted struggle they won a victory at Bannockburn (1314) which enabled them to restore the kingdom to its ancient independence. But Anglo-Scottish hostility was not brought to an end by this triumph and there were frequent clashes between the two countries during the next three hundred years. Scotland, being the weaker power, found it advisable to cultivate relations with France, and at times the Scots became the allies of the French in their wars with England.

Throughout the middle ages and into the modern period, at any rate, Scotland managed to retain her independence. It happened, however, that the royal families of England and Scotland became related by the intermarriage of members who were not immediately in line for either throne. Then, on the death of Queen Elizabeth in 1603, there were no Tudor heirs at hand and the Scottish people had the satisfaction of seeing their own king, James VI, inherit the throne of England.¹ He proceeded to Westminster, took the title of James I, and inaugurated in England the ill-starred dynasty of four Stuart kings. In this way Scotland and England became united under the same line of monarchs, but each retained its own parliament. The same king dealt with one parliament at Edinburgh and with another at Westminster.

The royal
union with
England in
1603.

This royal union naturally put an end to the old hostility and brought the two countries into better relations. It stood the strain of the English civil war, the Cromwellian dictatorship, the expulsion of James II, and the establishment of the Hanoverian dynasty. Yet it was not regarded as altogether satisfactory by either country. It was a union without unity. The Scots were especially desirous of a share in the industrial and commercial prosperity which England was deriving from the trade with her colonies; they also desired the privilege of freely shipping all their products into the English market. England was not willing to concede either of these things unless Scotland would submit to virtual annexation. So relations once more became strained and in 1704 the Scottish parliament announced that unless something were done it would proceed to choose a monarch of its own.

Its results.

¹ James VI was the son of Mary, Queen of Scots, who was a first cousin of Queen Elizabeth.

The parlia-
mentary
union of
1707.

To forestall an impending separation, therefore, commissioners from both countries were appointed to reach a common ground. They managed to frame a treaty embodying concessions on both sides, and this treaty was approved in 1707 by the parliaments concerned. Briefly it provided for the organic union of the two countries, under the name of Great Britain, with a single parliament at Westminster. The Scottish parliament was abolished, and Scotland obtained representation in both the House of Lords and the House of Commons. She was permitted to retain her own system of laws and legal procedure, her own religion and local institutions. In return for the abolition of their parliament the Scottish people were granted full freedom of trade with England and with the English colonies. It was a fair bargain; one country obtained political and the other economic advantages. Scotland traded her parliament for pounds, shillings and pence. She did it with her eyes open. And the Scottish people, on the whole, have not regretted the agreement of 1707. The union ushered in an era of material prosperity which lasted for a long time and made the southern part of Scotland one of the richest sections of the United Kingdom.

Present
government
of Scotland.

The government of Scotland, as arranged by the Act of 1707, has remained unaltered in its essential features to the present time. There is a secretary of state for Scotland who has a seat in the British cabinet. Like other members of the cabinet he is chosen by the prime minister. Invariably he is a Scotchman, although there is no legal requirement to this effect. In a general way the secretary is responsible for the supervision of administrative affairs in Scotland, in which work he is assisted by various functionaries and boards, including a lord advocate, an undersecretary for Scotland, a solicitor-general, and other functionaries. All laws passed by the British parliament apply to Scotland unless otherwise stipulated, and many things are uniform in the two countries, as, for example, the systems of national taxation and national defense. On the other hand many things are different, because Scotland retains her own system of civil law and procedure, her own hierarchy of courts, her own ecclesiastical organization and her own distinctive scheme of local government.

The repre-
sentation of
Scotland in
parliament.

Scotland, as has been said, is represented in the House of Lords by 16 Scottish peers and in the House of Commons by 74 members, which is about what the population warrants. In both chambers the Scottish members have exactly the same status as the English, and

are eligible for appointment to all ministerial positions. As a rule they have been well represented in British ministries, so well, in fact, their prominence is a matter of frequent remark by outsiders. Scotland has had a larger share in British administration than her population entitles her to have. Of the ten prime ministers during the past fifty years, five have been Scotchmen.

On the whole the feeling between these two sections of the United Kingdom has grown increasingly cordial during the period since 1707. Various new concessions to Scotland have been made. There has been no serious clamor for Scottish home rule, much less for a Scottish republic. There has been some grumbling about the neglect of Scottish interests at Westminster, but no strong movement to dissolve the partnership such as developed in Southern Ireland. This is the more noteworthy when one recalls the fact that Saxon and Scot were mortal enemies for over five hundred years preceding the union.

Success of the Scottish union and failure of the Irish union contrasted.

The reasons for this entente are not far to seek. Scotland was never conquered by England; she entered the union a free country; her people accepted a changed political status in return for fair compensation. Apart from merely sentimental considerations, Scotland lost nothing by joining with England. No intelligent Scotchman of to-day contends that his country would now be better off if the treaty of 1707 had been rejected. Ireland went into the union under vastly different circumstances. The island was invaded and conquered by English armies; the line of Irish kings was brought to an end by force; and the powers of the Irish parliament were reduced to a shadow. This parliament was allowed to continue its existence, but it did not represent the majority of the Irish people and it could do nothing that was not subject to review at Westminster. The union of 1800, moreover, was put through the Irish parliament by political trickery and manipulation. Ireland derived from the union of 1800 no commercial advantages of any account. It was a jug-handled bargain. Ireland gave up her parliament, mere wraith of a parliament that it was, and got nothing in return. Finally, the difference in religious belief made it impossible for this union to work out as the other had done.

Reasons for this.

IRELAND

Ireland's troubles with England go back a long way before the union of 1800. They are almost primæval. It is not possible to

Antiquity of the Irish problem.

understand the Irish problem, as it stands to-day, without some knowledge of its antecedents. In no other country, with the possible exception of Poland, are the political conditions of the present so largely a heritage of the past. This past is one long chronicle of friction, suspicion, and hatred. Ireland blames England for it all; and England blames Ireland for most of it. The truth is that both countries have been jointly responsible for Ireland's vicissitudes, in what proportion will doubtless remain a matter of controversy to the end of time.

Early history of Ireland.

Ireland, at the dawn of history, was peopled by Celts, the kinsmen of the Scots and of the ancient Britons whom the Saxon invaders drove out of England. These Celts had not united into a single Irish monarchy but were being governed by several native rulers when Henry II of England crossed the Irish Sea in 1171-1172 and conquered part of the island, more particularly the region around Dublin which thereafter came to be known as The Pale.

The Pale.

In this area English law and English judicial procedure were gradually established. There was also some immigration from England to The Pale, but the newcomers quickly became assimilated despite all attempts to prevent this. In due course a parliament was established within The Pale, but its authority was greatly limited at the close of the fifteenth century by a statute known as Poyning's Law. This law provided that all English statutes should apply to Ireland, that the Irish parliament should never be summoned except with the prior consent of the English government, and that when summoned its acts should be subject to the approval of the king in council. Many years later the English parliament followed this with a declaratory act (1720) which asserted its right to legislate for Ireland on any and all matters.

Poyning's Law.

Economic handicaps.

By these and various other measures Irish self-government was reduced to a phantom. Executive authority was vested in a lord deputy, appointed by the crown and not responsible to the Irish parliament. Neither the lord deputy nor his parliament exercised any real authority outside The Pale. In these outer and relatively untamed regions the people gave their allegiance to various local chieftains or "kings" who were often at war with one another but always ready to unite against the English. Irish agriculture was handicapped by this ever-recurring warfare and also by the prohibition of various Irish exports. The exporting of Irish wool was hindered, for example, and when the people set themselves to

manufacture their wool into cloth the exporting of cloth was also forbidden (1699).

Meanwhile various happenings in Ireland accentuated the strained relations between the two countries. During the reign of Henry VIII (1509-1547) England broke relations with the Holy See and became Protestant, while Ireland remained Catholic. This, in itself, widened the breach between the two countries. Then, a little later, the English government undertook to subdue the northern part of the island, and when the people rebelled their lands were confiscated. Early in the reign of James I (1611) the great plantation of Ulster was laid out and settled by emigrants from England and Scotland who became possessors of the confiscated lands. As the new settlers were Protestants this action divided the island into two unequal religious camps and laid the foundation for much later bitterness.

The settle-
ment of
Ulster.

Then came the struggle between Charles I and the English parliament. Ireland seized the opportunity to rise in revolt and was almost successful. England was dislodged from all save Dublin. But the day of reckoning was soon to arrive, for when Cromwell felt himself master of England he proceeded to Ireland on a mission of reconquest and retaliation. There he performed his task with a rigor which Ireland has not forgotten to this day. Extreme penalties were imposed upon the island by the English government, enormous tracts of land being taken from their rebellious owners and given to English military officers.

Ireland and
Cromwell.

This Cromwellian Settlement was not a settlement at all, for it did not break the spirit of the Irish people but merely left them in a bitterly hostile frame of mind, with a determination to undo the wrong at the first opportunity. Such an opportunity seemed to be at hand in 1689 when James II, having been driven from the English throne, landed in Ireland and called upon the people for aid. Once more all Ireland, except Ulster, responded. But once more it was a bad gamble, for James Stuart proved a frail reed on which to lean the Irish hopes. He and his army were overwhelmed at the Battle of the Boyne (1690) and Ireland once more had occasion to learn what *væ victis* meant. The island was now so thoroughly cowed and enfeebled that no more uprisings took place for over a century.

Ireland and
James II.

During this period of relative peace the attitude of the English authorities softened somewhat. England had troubles of her own in the last quarter of the eighteenth century—troubles in America,

The Boyne
(1690).

Ireland
during the
eighteenth
century.

in India, and in Europe. The American Revolution also carried its lesson to Westminster. So, in 1782, the English parliament renounced its claim to make laws for Ireland and repealed the restrictions which had been imposed by Poyning's Law. A year later it virtually conceded the supremacy of the Irish parliament and of the Irish courts within their own territorial jurisdiction. This seemed to give Ireland virtual home rule. "Ireland is a nation," cried Henry Grattan in ecstasy. But it was home rule with a query. The English crown continued to be represented in Ireland by a viceroy who, although technically responsible to the Irish parliament, was in reality controlled by the English House of Commons inasmuch as he was a member of the English cabinet. This was a wholly impractical and anomalous arrangement, bound to engender friction as time went on.

Irish Rebel-
lion of 1798.

Things went along without ruction for a dozen years or more. Ireland began to grow prosperous; her commerce expanded, and her industries showed signs of revival. Then the ill-fortune which has dogged the Irish nation through so many centuries showed its sinister form once more. The French Revolution gave Ireland an opportunity which her people could not resist. Not only did it send a wave of republican sentiment over the country but it brought England into a critical war with France. "England's emergencies are Ireland's opportunities"—so an old Irish saying goes. Accordingly, the French revolutionists carried their propaganda to Ireland, convinced the people that with England's back to the wall they needed only to strike for deliverance, and swept them into the Irish Rebellion of 1798. England's back may have been to the wall, but her hands proved to be free. The rebellion was crushed in a whirl of reprisals.

The Act of
Union.

Thereupon the English cabinet decided that Ireland should be put under bonds for good behavior. England must take no future chance of being stormed from the rear. Accordingly the prime minister, William Pitt the younger, prepared a plan for the parliamentary union of England and Ireland. An act of union was drafted and was submitted to the Irish parliament for acceptance. Outside of Ulster the public sentiment of Ireland was against the measure, nevertheless by dint of bribery, intimidation, coercive persuasion, and other corrupt practices it was forced through the legislative chambers in Dublin. It is said that Pitt spent nearly a million pounds sterling to get the measure passed. Some members of the

Irish parliament got titles, some got lucrative offices, some were bribed outright. In all fairness to Pitt it should be explained that these were the political methods of his time. He was not unfriendly to Ireland and expected that this union would be followed by various conciliatory measures, but he found the English opposition too great.

By the terms of the union the Irish parliament was abolished, and Ireland obtained representation in both Houses at Westminster—twenty-eight members in the House of Lords and one hundred in the House of Commons. Executive authority was to be exercised through a viceroy, representing the crown. As such he was responsible, through the ministry, to the British House of Commons. Irish laws and courts were unaffected by the union, save that the British House of Lords now became the court of last resort. There were almost no economic compensations. The alien landowner continued to possess most of the country. The division of religious sympathies between England and Ireland made cordiality impracticable.

Its provisions.

Save for a single flare-up in 1803, however, the Act of Union was followed by more than forty years of relative quiet. Amid the great economic changes which took place during this era, bringing industrial prosperity to the rest of the United Kingdom, the whole of Southern Ireland sat sullen, depressed, subdued. There were some local disorders but they were easily quelled. Daniel O'Connell rose to be the political leader of his people during this period, but he did not control the Irish members in the British House of Commons. Until after 1832 the suffrage was as narrow in Ireland as in England, hence the Irish members did not represent the body of the Irish people. Many of them, as in England, were named by patrons or chosen by close corporations. As the nineteenth century wore on many Irishmen began to emigrate to the United States and to the British colonies, and after the potato famines of 1846-1849 this exodus assumed huge proportions.

The half century after the union.

An agitation for the repeal of the union, led by O'Connell, had been set afoot as early as 1841, but for many years it made slow progress because it was associated in the English mind with republicanism and revolution. In 1873, however, an association calling itself the Home Rule League was formed with the avowed aim of securing by peaceful and parliamentary means a reasonable measure of Irish self-determination. This league undertook to

The home rule movement.

secure the election of home-rulers to parliament and under the leadership of Charles Stewart Parnell succeeded in creating an Irish Nationalist party in the House of Commons. The Nationalist party increased its numbers to the point where it eventually held the balance of power, and in 1886 Parnell persuaded Gladstone, the Liberal prime minister, to bring in the first Irish home rule bill.¹

The first
home rule
bill (1886).

This bill provided for the establishment of an Irish parliament in Dublin, with the right to make laws for Ireland, and to levy taxes except customs duties and excises. Executive power was to remain in the hands of a lord lieutenant, appointed by the crown, but responsible to the parliament of Ireland. All matters of concern to the British empire as a whole, and not to Ireland alone, were to be dealt with by the British parliament. In this parliament Ireland was no longer to be represented although she was to contribute one-seventeenth of all imperial expenses. In other words Ireland was to be taxed without being represented, a provision which gave rise to much criticism.

How it
fared.

This measure did not wholly satisfy the Nationalists, but they supported it. Much less, however, did it satisfy some of Gladstone's followers in England. These anti-home-rule Liberals, calling themselves Liberal-Unionists, bolted Gladstone's leadership, voted against the bill on its second reading, and defeated it in the House of Commons, thus forcing the prime minister to choose between resignation and an appeal to the country. A general election thereupon took place and the Liberals were overwhelmed by the new coalition of Conservatives and Liberal-Unionists. A Unionist ministry under Lord Salisbury then came into power and the first home rule bill went into the wastebasket. But home rule continued to be a burning issue in British politics for the Liberals did not forsake the cause, and at the next general election (1892) they found themselves once more in power, although again dependent upon the Irish Nationalists for a majority in the House.

The second
home rule
bill (1893).

So Gladstone in 1893 brought in his second home rule bill. It differed from its predecessor in some important respects, more particularly in providing that Ireland, besides having a parliament of her own, should be represented by eighty members in the British House of Commons. These members, however, were not to vote on matters concerning England and Scotland, but only on questions

¹ The Nationalists at this time had 83 members in the House of Commons. See above, p. 242.

in which Ireland could be shown to have an interest. The Irish members were thus to be in the House on some questions, and out of it on others, hence this arrangement was dubbed the "in and out" provision of the bill. English public opinion did not like this feature. It was looked upon as a menace to the whole system of ministerial responsibility—which in truth it was. A ministry would have a majority in the House of Commons on some questions and no majority on others. Nevertheless the House of Commons passed the bill and sent it to the House of Lords where it was rejected by a large majority. The Liberals did not press the issue farther, because there was lukewarmness in their own ranks, and Mr. Gladstone was presently induced to retire from the leadership. His retirement was followed by a Unionist victory at the polls and for the next ten years the friends of home rule were on the Opposition side of the House.

But the pendulum of politics eventually swung the other way and the Liberals came back into office. Having in mind what had happened in 1893, they did not bring in the third home rule bill until after they had curbed the powers of the Lords by the Parliament Act of 1911 and had thus made sure that their work would not be undone. The provisions of this third home rule bill stipulated that there should be an Irish parliament of two chambers, representing the whole of Ireland (including Ulster), with jurisdiction over all strictly Irish affairs. Certain matters, such as a military and naval policy, foreign affairs, treaties, and customs duties, were exclusively reserved to the British parliament. The lord lieutenant of Ireland, representing the crown, was to act solely on the advice of the Irish cabinet which, in turn, was to have the confidence of the Irish parliament. This bill went through the Commons in 1912, but was once more rejected by the Lords. Accordingly, under the provisions of the Parliament Act it could not go into force until the expiry of two years, that is to say, until the summer of 1914.¹

The third home rule bill (1912-1914).

Meanwhile Ulster came to the front with a threat of armed resistance if her people were subjected to the jurisdiction of a Dublin parliament. A strong Unionist organization was formed in Ulster; large numbers of volunteers were enrolled, and there was every indication that the inauguration of home rule in Ireland would be followed by a civil war between Ulster and the rest of the

The Ulster opposition.

¹ See above, p. 120.

country. But notwithstanding this serious danger the House of Commons gave the home rule bill its last passage over the two-year veto of the Lords.

Outbreak of
the world
war.

No sooner had it gone on the statute book in the summer of 1914, however, than Western Europe launched into the world war. At once the friends and the foes of home rule agreed to call a truce on this question. Leaders of all political parties came together and agreed that the Irish question, like all other domestic controversies, should be temporarily shelved in order that the British empire might devote its entire strength to the great struggle. More specifically it was agreed that the home rule act, although finally enacted, should not be put into operation until the close of the war.¹

Ireland dur-
ing the war.

During the first year of the war little was heard of the Irish question. Ireland was quiet, and when Ireland is quiet there is apt to be some trouble on the way. Although the Nationalist leaders, at the outbreak of hostilities, had pledged Ireland's support to the Allied cause, it soon became apparent that they could not carry the country with them. In Britain's emergency there were many young Irishmen who could see nothing but the best opportunity that had come to Ireland since Napoleon's day. So they urged the striking of a blow for complete independence, for separation from the British empire, for an Irish republic. Obstacles were thrown in the way of enlisting Irishmen for service with the Allies, and secret negotiations with Germany were opened by one of the Irish leaders, Sir Roger Casement. The Germans promised arms, munitions, and money to aid an Irish rebellion.

The Sinn
Fein move-
ment.

The driving force in this movement for an Irish republic was the organization known as Sinn Fein.² Sinn Fein had been in existence for some years prior to 1914, but had gained relatively few recruits until that year, when the great European conflagration seemed to presage the incoming of a new world order. With mobilizations going on everywhere, Irishmen (particularly young Irishmen) could not resist the contagion. By the thousands, therefore, they deserted the Nationalist or home rule party and enrolled themselves in the more radical ranks of Sinn Fein. The organization grew to large proportions and its leaders only awaited a propitious hour to strike.

¹ There was also an understanding that before putting the measure into effect the ministry would secure from parliament some concession to the desires of Ulster.

² The words Sinn Fein (pronounced "Shin Fane") are Old Irish for "ourselves alone."

As it turned out, the hotheads got beyond control and struck too soon. Before there was any certainty of German coöperation an insurrection broke loose in Dublin and the Irish Republic was proclaimed (Easter Monday, 1916). A hopeless venture from the start, the Easter rebellion was localized and put down within a few days. Several of the leaders were executed. But the quelling of this rebellion did not settle anything and Ireland remained on edge until the end of the world war. At the general election which followed the armistice the country showed its temper by electing seventy-three Sinn Fein members to the British House of Commons and pledging them not to take their seats. Instead they were instructed to assemble in Dublin as a parliament of the Irish Republic.

The Easter
Rebellion
(1916).

These ongoings made it apparent that the Irish question could not be settled by putting into operation the home rule act of 1914. Ulster did not want it; neither did the rest of the country. The former objected that the act went too far, the latter that it did not go far enough. Early in 1920, therefore, the British prime minister, Mr. Lloyd George, laid before parliament a new measure intended to supersede the still-dormant home rule act of 1914. The outstanding feature of this new measure was its provision for two separate governments in Ireland, one for six counties in Ulster and the other for the remaining twenty-six counties of Ireland. Each of these two areas was to have its own parliament, the Ulster parliament sitting in Belfast and the parliament of Southern Ireland in Dublin. Each parliament was to have the usual powers within its own field of jurisdiction. In addition there was to be a federal council made up of forty members, twenty elected by each of these two Irish parliaments. This federal council was to have such powers in relation to all-Irish affairs as the two Irish parliaments might agree to bestow upon it. Certain important matters, however, were reserved for the exclusive jurisdiction of the British government. Among these were national defense and foreign relations.¹

The fourth
home rule
measure
(1920).

This new measure passed parliament without mishap and was accepted by the people of the six Ulster counties who proceeded to set up their new government. In the southern counties, however, the popular opposition to the scheme was so intense that no progress could be made. The people would neither elect members to the proposed parliament, nor carry suits to the courts, nor obey

Southern
Ireland's
active re-
sistance.

¹ The significant portions of this Act are printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chap. viii.

any order of the British authorities. Instead the masses of the people adhered in their allegiance to the Irish Republic, obeyed the orders of its officials, and carried their controversies to its own courts. For a time the English government tried coercion, sending large bodies of troops to Ireland in an endeavor to assert its authority. Guerilla warfare ensued over a large portion of the country, with much destruction of life and property. The titular officials of the republic were kept "on the run"; the republican courts were broken up whenever found; the whole island was in a turmoil. But in due season the British government became convinced that Ireland could not be coerced, at any rate not without an enormous outlay, and the Irish leaders also reached the conclusion that Britain could not be expelled. Then, and only then, did the time become ripe for negotiations on a give-and-take basis. It had taken nearly seven hundred years to bring the two countries into this frame of mind.¹

The treaty of 1921 and the new Irish constitution.

So negotiations for a treaty began in 1921. Certain members of the British cabinet and an equal number of delegates representing the Dail Eireann, or de facto parliament of the Irish Republic, undertook the work of reaching a compromise, and eventually they were able to agree upon the draft of a treaty. This agreement was duly submitted to the British parliament and to the Dail, by both of which it was ratified. It provided, among other things, that an Irish constitution should be prepared and that when this constitution had been accepted by both sides it should go into effect. The constitution was duly framed by a group of Irish leaders; it was then ratified by a newly elected Dail Eireann, and went into effect on December 6, 1922.²

THE IRISH CONSTITUTION

General significance and nature of the constitution.

This constitution of the Irish Free State deserves more than a page or two, for it contains many novel and interesting features. Although the treaty of 1921 provided that Ireland should have the same constitutional status as the Dominion of Canada, the Irish constitution differs widely from the Canadian, and indeed from the constitution of every other country. It is rather strongly academic in tone, and smacks of the lamp, yet the Irish constitution embodies

¹ The story of these years 1916-1921 is fully told in W. A. Phillips, *The Revolution in Ireland* (2nd edition, 1926).

² A copy of this document may be found in Darrell Figgis, *The Irish Constitution* (Dublin, 1923).



some provisions which are of considerable interest to the student of comparative government.¹ And on the whole it is quite unlike what one might have expected the Irish people to adopt.

From the United States, by the way, it borrowed nothing. Although the relations between Ireland and America have been close and friendly for many years, the framers of the Irish constitution took no stock in any of those features which Americans regard as the excellences of their own government, such as the principle of checks and balances, the qualified executive veto, senatorial confirmation of appointments and treaties, and elective judges in state courts. They drew to a much greater extent from England than from America.

The constitution of the Irish Free State is operative over the twenty-six southern counties of Ireland. It does not apply to the six Ulster counties which continue under the Act of 1920. It begins with the statement that the Irish Free State is a co-equal member of the British commonwealth of nations, that all powers of government are derived from the people and shall be exercised in Ireland in accord with the constitution.² Then follows a short bill of rights which defines Irish citizenship, establishes the Irish language as the national tongue (although English is to be equally recognized as an official language), forbids the granting of titles (with certain exceptions), guarantees the writ of habeas corpus, declares the inviolability of persons and property, and stipulates freedom of conscience and worship, freedom of speech, and freedom of assembly—in other words the traditional English liberties. It also provides that there shall be no endowment of religion, and on the other hand “no discrimination as respects state aid between schools under the management of different religious denominations.” All citizens, it declares, have the right to free, elementary education.

The constitution summarized.

The bill of rights.

Then the constitution proceeds to establish the frame of government. A parliament is established with power to make laws for the peace, order, and good government of the state. This parliament consists of two chambers,—a chamber of deputies (*Dáil Éireann*) and a senate (*Seanad Éireann*).³ The size of the chamber

The Irish parliament.

The chamber.

¹ The two most conspicuously academic provisions in the original document have now been amended out of it. See pp. 327, 332.

² Provision is made, however, that the constitution is to be construed with reference to the treaty of 1921 and that anything done contrary to this treaty shall be void.

³ Pronounced as if spelled *Dawl Airin* and *Shainad Airin*.

is not rigidly fixed, but is to be set by law from time to time. Members of the chamber are elected from districts or constituencies (at least three from each constituency) on a basis of universal suffrage and by a plan of proportional representation. The term is five years but the chamber may be dissolved by the governor-general at any time on the advice of the ministers, as in England. At present the Dail Eireann has 153 members, of whom six are chosen by the two Irish universities (Dublin University and the National University).

The suffrage for Dail elections.

As in England, a voter may be registered and may vote either (a) where he resides, or (b) where he has a place of business, or (c) in a university (if he be a graduate); but he is not allowed to vote more than once, as is permitted in English parliamentary elections.¹ There is no plural voting in Ireland. Candidates can be nominated by petitions bearing the signatures of at least ten qualified voters, but each candidate must put up a deposit of £100 which is forfeited unless he polls one-third of the votes necessary for his election.² All the voting takes place on one day and the ballots are counted in accordance with the Hare system of proportional representation.

The senate.

The Irish senate embodies a novel experiment in the creation of a second chamber. Its size is fixed at sixty members. According to the constitution it is to be composed of "citizens who have done honor to the nation by reason of useful public service, or who, because of special qualifications or attainments, represent important aspects of the nation's life."³ In other words it was desired to have the senate made up of men and women quite above the usual run of elected legislators. But how could the selection of such members be assured? The original constitution provided that every three years a panel or list of forty-two eligibles should be prepared by the chamber and the senate acting separately, the chamber contributing twenty-eight names to this panel, and the senate sixteen. In addition there were to be placed on the panel the names of all persons who had been at any time members of the senate (including members about to retire), provided such persons signified their desire to be included. Thus the panel might contain a much larger number of names than forty-eight.

The original plan of electing senators.

¹ See p. 140.

² In England the deposit is £150 and the requirement for getting it back is one-eighth of the total vote. See p. 149.

³ Article 29.

From this panel a senatorial election was to be held every third year with fourteen senators to be chosen by the people for a twelve-year term, but at senatorial elections no voter under thirty years of age was to be permitted to vote. For this election the entire Irish Free State constituted a single district, and the votes were to be counted in accordance with the rules of proportional representation. In addition to the fifty-six senators chosen in this way, each Irish university was to elect two senators by vote of its graduates, the election taking place every six years.

The election of senators.

This method of choosing senators at large, by popular vote, but restricting the choice to the confines of a panel or list was a novelty in the science of government. The plan was not borrowed from any other country but was invented or devised by the group of Irish leaders (some of them college professors) who drafted the constitution of 1922. It was a curious mixture of nomination by legislators, direct election by the older portion of the electorate from a restricted panel of candidates, and the counting of votes on a proportional basis. As might have been safely predicted, it did not work well when put to the test. The panel of nominees turned out to be made up for the most part, not of highly distinguished citizens but of highly expert politicians. The voters under thirty years of age objected to being deprived of the suffrage at the senatorial elections. And complaint was made that the proportional plan of counting the votes did not result in fair representation. At any rate the whole arrangement seemed defective and in 1928 it was changed by a constitutional amendment.¹

Objections to it.

Under the new provision the senators are now elected by the two chambers, sitting in joint session. The choosing takes place every third year, with one-third of the senate's membership to be chosen each time. The voting at the joint session is on a basis of proportional representation, thus giving each political party its share of the senators. In connection with this change in the method of election the senatorial term was shortened from twelve to nine years. Whether the new plan will function better than the old one is problematical.

The new method now in use.

The chamber of deputies and the senate, sitting separately, make up the Irish parliament. They are the lawmaking organs of the Irish Free State. But their legislative powers are not unlimited. The treaty of 1921 provides, for example, that the Irish army shall

Limits on the powers of the Irish parliament.

¹ Amendment VII.

not be increased, in proportion to the Irish population, beyond the ratio which the British army bears to the population of Great Britain. It also provides that in time of war or of strained relations with a foreign power, the British government may take over any Irish harbor for defense purposes. Finally, it stipulates that every member of the Irish parliament shall take an oath of allegiance to the British king. This last-named requirement has been the basis of continual protest on the part of the republicans.

The process
of legisla-
tion:

Money bills.

As regards all other matters of purely Irish concern, however, the parliament of the Free State is free to legislate as it pleases. The two chambers of this parliament ordinarily concur in the making of laws, but their powers are not equal. In the matter of money bills the chamber has exclusive authority.¹ Every money bill, nevertheless, is sent to the senate after passing the chamber, and the senate may make recommendations. Within fourteen days it must be returned to the chamber, which may then pass the bill "accepting or rejecting any or all of the senate's recommendations," whereupon it becomes a law. But while the chamber has the sole initiative in money bills, it is restricted by the old English rule that no money shall be voted unless the purpose of the appropriation has in the same session been recommended by a message from the representative of the crown, acting on the advice of the executive council.² Furthermore the chamber, to ensure that no money is spent without its approval, appoints a comptroller and auditor-general who audits all accounts and makes a periodical report. He cannot be removed except for stated misbehavior or incapacity, and then only on resolutions passed by both the chamber and the senate.

Other bills.

Bills, other than money bills, may be originated in either House. When passed by one they are sent to the other and may be amended at will. But in all cases of disagreement between the two houses, the will of the chamber ultimately prevails. If the chamber rejects a bill which originated in the senate, that is the end of it. But if the senate rejects or adversely amends any ordinary bill which originated in the chamber, the measure may be sent a second time to the senate after eighteen months, and if the senate does not

¹ The constitution defines what bills shall be deemed "money bills." In case of controversy the matter is referred to a committee consisting of three members of the chamber, three members of the senate, with the senior judge of the supreme court serving as chairman.

² Article 36. See also *above*, p. 222.

agree to it in sixty days the bill becomes a law. In other words it takes twenty months to enact a law when the senate holds out against it. The Irish senate is, therefore, like the British House of Lords in that it (1) has no authority as respects money bills, and (2) must ultimately give way to the lower chamber on any controversy over other bills. An interesting provision of the Irish constitution is that which stipulates, however, for a joint meeting of the two houses (on request of the senate) for debating, but not voting, upon any measure (other than a money bill) that may be the subject of controversy between the two. When a measure has been passed by the Irish parliament it goes to the governor-general who gives it the royal assent, but he may withhold this assent, if he sees fit, until the will of the crown can be ascertained. This delaying of assent is a means of blocking any measure that might seem to be in violation of the Anglo-Irish agreement of 1921. It would probably not be used under any other circumstances.

The original constitution of the Free State made provision for the use of the initiative and referendum. It provided that on the written request of two-fifths of the members in the chamber, or a majority in the senate, any bill except a money bill or an emergency measure might be withheld from going into force for ninety days. In this interval a referendum could be demanded by one-twentieth of the registered voters. The Irish parliament was also directed by the constitution to arrange that any fifty thousand voters might initiate a proposed law and have it submitted at the polls. But the referendum clause worked badly because the republican minority in the chamber made free use of it as a means of filibustering to delay or block legislation, while the initiative clause was never put into effect. In 1928, therefore, another constitutional amendment struck out the whole initiative and referendum provision so far as the enactment of laws are concerned.¹ There is now no provision for using the statutory initiative and referendum.²

A word or two ought to be added concerning the organization and procedure of the Irish parliament. The chamber has its speaker, as in the House of Commons. Like his prototype at Westminster the speaker of the Dail is supposed to be absolutely impartial. To encourage this impartiality the Irish constitution

Abolition of
the initia-
tive and
referendum.

Procedure
in the Irish
parliament.

¹ Amendment X.

² The constitution still provides, however, that after 1930 all constitutional amendments must be submitted to the voters before becoming effective.

now provides that the speaker shall be deemed automatically re-elected from his own constituency without being voted on at all. His reelection is then made automatic so long as he continues in the speaker's chair.¹ In that way he is divorced from all party obligations. The same speaker has been in office since 1922. The work of both chambers is done by committees, much as in the British parliament, but with a few minor differences. The same distinction is made in Dublin, as at Westminster, between public and private bills; but in Ireland all private bills must originate in the senate, thus saving the time of the senate.² The system of provisional orders is also used in Ireland, as in England. Debates on the floor are generally conducted in English, and often they become quite lively, as one might expect. But the Irish language may also be used in debate, and official publications are printed in that tongue as well as in English. For sentimental reasons the Irish leaders have desired to stimulate the revival of their old language and have it actually supplant English as the national tongue; but with conditions as they are in this twentieth century it would seem to be an uphill task.

The governor-general.

So much for the Irish parliament, its powers and its organization. Next in logical order for consideration comes the structure and authority of the executive. Executive authority in the Irish Free State is declared to be vested in the king, but provision is made that such authority shall be exercisable in accordance with the "law, practice and constitutional usage" governing the exercise of the executive authority in the case of the Dominion of Canada, by the representative of the crown.³ In other words the king, on the advice of the British prime minister, appoints a governor-general to represent the crown in Dublin, and this governor-general has exactly the same powers as have been exercised in the past by the governor-general in Canada. The provision was phrased in this way because the powers of the king's representative have been well-settled by more than a half-century of usage and are now not open to controversy. In brief they may be summed up by saying that the governor-general in Canada has the same powers

¹ Amendment II.

² Cf. *above*, p. 189.

³ Cf. *below*, chap. xix. Notice the correct uses of the terms "the king" and "the crown" in this provision. Executive authority is vested in the monarch, but it is exercised by the crown (in other words by the king on the advice of the British prime minister) through a representative.

in relation to the Canadian parliament that the king possesses in relation to the parliament at Westminster. He is to precisely the same extent guided by the advice of his responsible ministers. In the treaty of 1921 it was agreed that Southern Ireland should be given "dominion status," and this is the way (by allusion to Canada) that the pledge is put into effect.

The Irish constitution makes provision for a cabinet and for a prime minister, although it does not use either of these terms. It calls them executive council, and president of the executive council, respectively. The original constitution established a unique and peculiar arrangement in the matter of ministerial responsibility, by providing that four members of the executive council (it called them ministers) should have seats in the chamber but that the remaining eight should not be members of either house unless both chambers should by legislative act designate a particular minister or ministers (not exceeding three) to be placed in the "political" category along with the four above mentioned. It was thus the intent of those who framed the Irish constitution that the executive council or ministry should have two classes of members: first, four (or possibly seven) political ministers, including the president of the council or prime minister, who should be members of the chamber and responsible to it, and second, a group of from five to eight non-political ministers, who should be chosen from outside the chamber's membership and have no direct responsibility to it. Ministerial responsibility, in other words, was to attach to the political ministers only. The others were to be a sort of high civil service group, chosen for their special administrative qualifications.

The two groups of ministers were to be chosen in accordance with the two conceptions of responsibility. The prime minister (or president of the council, as he is called) was to choose his political colleagues, while the non-political members were to be named by the chamber itself. According to the constitution they were to be "generally representative of the Free State as a whole, rather than of groups or parties." Having been chosen by the chamber they were not to be removed except for incompetence or misconduct even though the party complexion of the chamber should undergo a complete change.¹ The political ministers, on the other hand,

The executive council.

A curious feature.

The original method of choosing the ministers.

¹ Although not members of either chamber the non-political ministers were given the right to sit and speak (but not to vote) in the Dail.

would go out of office whenever they failed to command a majority in the chamber.

It has now
been abandoned.

This attempt to combine responsibility with permanence, in the same ministry, was one of the things that gave the Irish constitution of 1922 its academic cast. The idea, of course, was to keep the ministry responsible to the chamber in matters of policy, while permitting it to include ministers with expert qualifications whose tenure would be relatively permanent—after the fashion of the ministers in Switzerland where members of the federal council do not go out of office on adverse votes of the legislative body.¹ But hybrids rarely thrive in politics and this combination of English and Swiss ministerial usages did not work out very well in Ireland. Some of the non-political members, feeling themselves secure, began to criticise the policies and actions of their chief, the prime minister. Cabinet solidarity (which is the essence of the cabinet system both in England and in the United States) soon went a-glimmering. What Irishmen called “the government” became a house divided against itself. The result, after a season of bickering, was a decision to abolish the bifurcated arrangement, which was done by a constitutional amendment in 1927.² The amendment permits the placing of all the ministers in the political category if the prime minister so desires.

The ministers and the civil service.

The president of the executive council is appointed by the governor-general on nomination of the chamber. In other words he is the leader of the majority party in the chamber. So his method of selection corresponds in general to that of the prime minister in England. Thus the Irish system of ministerial government has been approximated to that of England. The same is true of the civil service. In 1924 the Free State parliament established a civil service commission with the duty of holding competitive examinations and certifying all candidates for subordinate positions. The rates of pay in the government service, and the conditions of work, are not fixed by this commission, however, but by the minister of finance who is the Irish counterpart of the English chancellor of the exchequer.

The Irish courts.

The judicial system of the Irish Free State, in accordance with the constitution, consists of lower courts, a high court, and a supreme court. All judges are appointed by the governor-general

¹ See *below*, ch. xxxiii.

² Amendment V.

on the advice of the executive council. The Irish constitution makes no provision for the popular election of judges. Judges are appointed without limit of time and are not removable before the retiring-age except by resolution of both the chamber and senate, and then only on charges. Their salaries may not be diminished during their continuance in office. The supreme court has final jurisdiction in all cases save those in which an appeal may be taken to the judicial committee of the privy council in England.¹ The high court, with an appeal to the Irish supreme court, may declare any law of the Irish parliament to be unconstitutional. This provision was not taken from the United States. The same procedure exists in all the British dominions.

There are three political parties in Ireland. The Free State party, which has been in power since 1922, stands pledged to uphold the Anglo-Irish treaty and the constitution. The Labor party has also accepted the treaty and the constitution. But the Republicans, under the leadership of De Valera, are unreconciled to both. They continue to demand the establishment of an Irish Republic, wholly independent of the British commonwealth of nations. For a time some of the elected Republicans or Sinn Feiners refused to take their seats in the Dail because this necessitated swearing allegiance to the king, but they have now adopted the practice of taking the oath—with mental reservations. At the last election the Republicans gained considerably. If they should get control of the Dail they would probably press for a revision of the Anglo-Irish treaty and thus revive some of the old friction.

Political parties.

The majority of the Irish people have accepted the Free State because it seemed to be the only practicable alternative to a continuance of warfare, disorder, and demoralization. It appealed to them as an expedient, not as an ideal. It appealed to the heads, not to the hearts, of Irishmen. Under such conditions it would be folly for anyone to venture a prediction as to what the future may bring forth.

The future.

Local government in Ireland continues for the most part as it was before 1922. There are thirty-three administrative counties, each with its own elective county councils. The cities (or boroughs) have much the same organization as in England, but the minister of local government has been given power to dismiss county or city councils from office and replace them by appointive commis-

Irish local government.

¹ See above, p. 282.

sioners. This has been done in some instances, notably in Dublin and in Cork. The most interesting (and significant) feature of the Free State local administrative system is the power of the central government to select all the paid officials who are employed by the counties and cities. This is done through a local appointments commission which sits in Dublin.¹ This commission prescribes the qualifications and holds the competitive examinations. The final selections are made by it, without giving the local governments any share in the matter. And after an appointment is made the local authorities cannot dismiss an official although he is paid out of the local treasury. He can only be dismissed by action of the Free State ministry. This represents an extraordinary centralization of the appointing and removing power. It is the absolute negation of municipal home rule—and in Ireland, of all places. Whether such a system can long be maintained is questionable. Whether it will conduce to the development of a true sense of civic responsibility in local government is even more questionable.

The govern-
ment of
Northern
Ireland
(Ulster).

By the treaty of 1921 the six northern counties of Ireland were given the option of joining the Free State or of continuing their separate government under the Act of 1920. They chose the latter alternative. Northern Ireland has her own parliament, with a senate and a House of Commons, a cabinet and a governor. Members of the House are elected by the people from single-member districts. The senators are chosen by the House for eight-year terms. When disagreement arises between the two chambers over a non-financial bill, the measure goes over until the next session. Then, if the disagreement persists, a joint sitting is held and the matter voted upon. In the case of money bills the senate can reject but is not permitted to amend. If it rejects a money bill, however, a joint sitting can be required at once, without waiting till the next session. The governor of Northern Ireland is appointed by the crown but is bound by the advice of his ministers, as in the other dominions. The ministers, in turn, are responsible to the House. Northern Ireland continues to be represented in the British House of Commons as before the treaty.

The six northern counties constitute nearly the whole of the province of Ulster and have formed the most prosperous portion of Ireland. They occupy an area less than half the size of Maryland,

¹ It has three members, viz., the secretaries of the finance, education, and local government departments in the Free State executive.

with a population of about a million and a quarter. Belfast is the capital. Northern Ireland differs in religious affiliation from the rest of Ireland, and that is the chief reason why one small island seems to require two separate governments.

There are many political histories of Ireland. The most useful for the general student are P. W. Joyce, *Concise History of Ireland* (London, 1914); W. O'C. Morris, *Ireland 1494-1905* (Cambridge, England, 1909); and S. Gwynn, *The History of Ireland* (London, 1922). Attention should also be called to E. R. Turner's *Ireland and England* (New York, 1919) which contains a very good bibliography.

On the home rule movement there is P. G. Cambray's *Irish Affairs and the Home Rule Question* (London, 1911) which is written from the Unionist point of view, and S. G. Hobson, *Irish Home Rule* (London, 1912) which is strongly Nationalist in tone. F. H. O'Donnell, *History of the Irish Parliamentary Party* (2 vols., London, 1910) is a full and trustworthy recital. The Sinn Fein movement is described in R. M. Henry, *The Evolution of Sinn Fein* (London, 1920), and the Easter insurrection in John F. Boyle's *Irish Rebellion of 1916* (London, 1916). A much more impersonal volume is *The Revolution in Ireland, 1906-1923*, by Professor W. Alison Phillips (London, 1924). The most useful books on the Irish constitution are Darrell Figgis, *The Irish Constitution* (Dublin, 1922); S. Gwynn, *The Irish Free State, 1922-1927* (London, 1929); and J. G. S. McNeill, *Studies in the Constitution of the Irish Free State* (Dublin, 1925).

The government of Northern Ireland is described in A. S. Queckett, *The Constitution of Northern Ireland* (Belfast, 1928).

CHAPTER XVIII

THE GOVERNMENT OF INDIA

There never has been anything so extraordinary under the sun as the conquest and still more the government of India by the English; nothing which from all points of the globe so much attracts the eyes of mankind.—*Alexis de Tocqueville*.

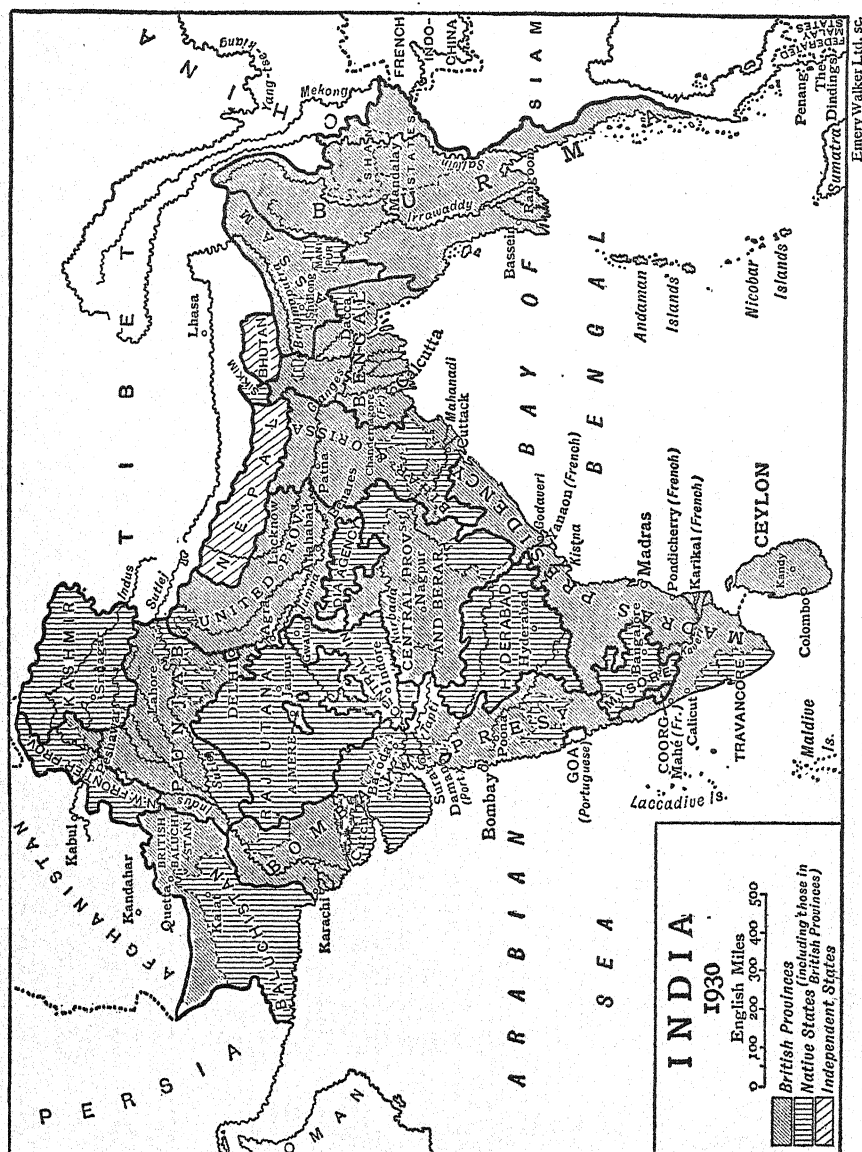
The successful administration of the Indian Empire by the English has been one of the most notable and admirable achievements of the white race during the last two centuries.—*Theodore Roosevelt*.

India in the
seventeenth
century.

India is the vast and varied Italy of the Asiatic continent, a great peninsula fenced on the north by towering mountains, but protruding far southward into the tropical seas. To Europeans of the middle ages it was dimly known as a far-away land, renowned for the spices and other costly commodities which it supplied. When Englishmen, during the sixteenth century, began to take an interest in India, the peninsula was a hopeless jumble of diverse native governments, races, religions, and languages. The Great Mogul, at Delhi, was nominally overlord of them all; but his authority did not count for much outside a relatively small area. The extensive Mogul empire had become disintegrated into the Mahratta states, the Moslem kingdoms of Oudh and Bengal, the Rajput principalities, and the territory of the Sikhs. A score of kingdoms, principalities, and small native states covered the rest of the territory. India, in 1600, was like continental Europe at the same epoch, a chaos of political rivalries, big and little, with endless quarrels going on and no outstanding rulership. This must be kept in mind if one is to understand the ease with which the English brought the country under their sway.

How Eng-
land ob-
tained her
first foot-
hold in
India.

England's interest in India dates from the chartering of the East India Company, a body of commercial adventurers desiring to trade with the Orient. This company, in 1600, was given wide powers, including the right to acquire territory and to make regulations for the government of such acquisitions. Although its chief activities were commercial, the East India Company soon found it



desirable to secure, by purchase from the native potentates, various tracts of land immediately surrounding its trading posts or "factories." These land holdings were gradually extended by further treaties and purchases until the company became the owner of large territories in which it set up its own civil government. The East Indian trade turned out to be very profitable and in some years yielded dividends of one hundred per cent, hence the company's operations were rapidly extended to many parts of the peninsula. Large stores of valuable merchandise were concentrated at various points and had to be protected. The native chiefs could not guarantee this protection, so the company inaugurated the policy of maintaining, at each of its posts, a small garrison of Englishmen, drilled and officered in military fashion. And with the rapid increase in the number of trading posts these garrisons eventually gave the company control of a sizeable army.

In due course, however, rival exploiters of the trade came into the field, more particularly the French East India Company which was organized in 1664. This company also established trading posts and warehouses in India, sometimes not far from the English settlements. Similarly the French entered into negotiations with the native rulers and secured control over various tracts of territory. Like the English, moreover, they stationed garrisons to protect their trading operations. But this policy of keeping constabularies in India proved rather expensive and after a while both companies found it cheaper to hire and train native troops. They found that these natives made good soldiers when drilled and commanded by European officers.

The conflict with the French.

In this respect the native races in India differed from those of North America. The brown man was amenable to military discipline, the red man was not. Although both the French and the English tried to drill their respective allies in the French and Indian wars, they never met with much success. The North American Indian could not be persuaded to fight in European fashion. Given a musket, he fought as with bow and arrow, skulking behind trees and barricades. He would not march in column of squads or deploy into line when the enemy appeared. But the natives of India were ready to do it. What is more, they were willing to do it for half the pay that Europeans demanded.

Indians, east and west.

So both the English and French East India companies presently had native armies on their pay roils. And these armies had to have

How the
Anglo-
French con-
flict devel-
oped.

something to do. Mercenaries are unprofitable unless they are kept employed. Opportunities for trouble, moreover, were right at hand, for the native rajahs were almost constantly at war with one another, and they naturally tried to drag the commercial companies into their comic opera warfare. To this end, when two rajahs came to blows, they would each make overtures to the English and French companies for alliances and help, offering grants of more land, privileges, and all sorts of concessions in return.

Intrigues
with native
potentates.

In this way the two companies were led into intrigues, secret treaties, alliances, and finally into open warfare. If the English supported one claimant to a native throne, the French, by sheer force of self-interest, felt obliged to support his rival. Thus it came to pass that English and French officers were leading company troops against each other under the flags of their respective countries, although England and France were supposedly at peace. Had India been a nation, a united country, with a strong central government, this condition of affairs would never have been tolerated; but there was neither unity nor consciousness of nationalism. So the whole peninsula became a cockpit in which two European commercial companies fought their duel for supremacy. When the combat thickened these companies drew their respective governments in, and eventually the Anglo-French conflict of 1753-1761 became a war of almost world-wide dimensions. French and British armies battled in India, in Europe, and in America as well.

The out-
come in
1763.

The issue, so far as concerned India, was decisively settled in this war. England, holding control of the seas, was able to support and reinforce her troops, while the French were not able to do either. This was a handicap that the French could not overcome, and by the Treaty of Paris (1763) they were forced to withdraw from India, reserving only a small tract of land at Pondichery. The British East India Company, meanwhile, clinched its hold upon the country by reducing the more powerful native rulers to subjection. The Great Mogul at Delhi became its vassal. It deposed other native potentates and installed rulers of its own choice. Before long it acquired the right to collect the taxes and to administer justice throughout the whole area of Bengal. Thus the Great Company moved from commerce to government. From a huckster in spices and dyes, it became a trafficker in revenues, territories, thrones, and destinies.

Up to this point the British government had assumed no direct share in the administration of the East Indian territory. It had merely given military aid to the company as part of its own war against France. But the powers and jurisdiction of the British East India Company were now so extensive that some supervision by parliament seemed to be necessary. It is always unwise to leave the functions of trader and ruler unreservedly in the same hands without supervision. In that case the amount of profit is apt to be the only criterion of good government. The operations of the British in India, during the years immediately following the expulsion of the French, illustrated how oppressive such an alliance between commerce and government can be, for the East India Company soon turned the civil administration into a mere agency for the earning of dividends. Its officials levied indemnities and fines at discretion, piled up wealth for themselves, came back to England and bought seats in the House of Commons from the owners of pocket boroughs.¹

Indian administration after 1763.

There, in the heat of partisan zeal, they often shocked the conscience of the country by showering accusations of extortion and brutality upon one another. By these and other tales of corruption the public conscience in England was aroused and in 1776 parliament passed a general statute known as the Regulating Act which provided that a governor-general, appointed by the crown, should be stationed at Calcutta with an appointive council to assist him. The governor and his councillors were to supervise the political administration of the territories within the company's jurisdiction, while the company's own board of directors was left in charge of commercial and financial matters. Warren Hastings became the first governor-general under the provisions of this Act.

The Regulating Act (1776).

But the provisions of the Regulating Act were not found to be altogether satisfactory, for the respective powers of the two authorities were not clearly defined, and much friction between the company and the governor-general resulted. Eventually Hastings was recalled and impeached before the House of Lords; but he was not

Pitt's India Act (1784).

¹ See *above*, pp. 134-135. Readers of Thackeray will recall his exaggerated description of the typical nabob "who purchased the estates of broken-down English gentlemen with rupees tortured out of bleeding rajahs, who smoked a hookah in public, and in private carried about a guilty conscience, diamonds of untold value, and a diseased liver: who had a vulgar wife with a retinue of black servants whom she maltreated."

convicted. The historian Macaulay, in what is perhaps the finest essay ever written by an Englishman, has vividly described the proceedings. The root of the trouble lay in an unworkable statute. The dual plan of royal and company government would not function. There was nothing to do but abandon it, which parliament did by the passage of Pitt's India Act in 1784. This statute established in London a board of control consisting of several privy councillors with a president who eventually became secretary of state for India. It provided that all the operations of the East India Company should be under the supervision of this board. Thus it established the complete supremacy of the crown in India. The office of governor-general was retained, but in order to avoid friction the appointment was now vested in the hands of the company. The company, in other words, was to govern India but must do its governing under the scrutiny of a board which was appointed by the crown and responsible to parliament.

How it
functioned.

This system of administration turned out to be an improvement. It stood the strain of the Napoleonic wars during which the French attempted to regain a footing in India, and with some changes it was continued down to the middle of the nineteenth century, during which time large additions to the British territories in India were made. The authority of the native rulers was gradually reduced, or even extinguished, in favor of British jurisdiction. India seemed to be prospering under the rule of "John Company." But in the teeming lands of the Orient the superficial appearances are often deceptive, and there was more resentment brewing in India than the English officials realized. The Sepoys, in particular, had not resigned themselves to British suzerainty, and their leaders only awaited a fair opportunity to throw it off.

The Sepoy
mutiny
(1857).

So the mutiny of 1857 came as a great surprise. It caught the company unawares. The English, as it now appeared, had built up a formidable engine of revolt through their policy of maintaining large bodies of Sepoy troops, armed and drilled in European fashion, with English officers in command. It is never safe to arm a people whom you desire to hold in subjection. Particularly it is unsafe to give them control of strategical positions as the English did in India prior to 1857.

What
caused it.

A small spark will touch off an explosion when enough combustible vapor is at hand. The Indian mutiny was fired by an episode of almost ludicrous inconsequence. This is the story in brief:

The Enfield cartridges used by the Sepoy troops in their target practice were supplied from England. To protect them from dampness on the voyage they were enclosed in paper greased with animal fat. Before putting the cartridge in his rifle at target practice the native soldier was supposed to bite off this cover. Now it happens that to the Hindu the cow is a sacred animal, and to the Mohammedan the pig is unclean. So, no matter what the soldier's religion, it was not difficult to convince him that by using greased cartridges the English were provoking a sacrilege. Agitators soon convinced the troops that the destruction of their ancient faith was the chief design of the whole procedure and the mutiny burst like a flash. On a given signal whole regiments mutinied, shot their officers, and ran amuck. The restoration of the Mogul empire was proclaimed. The rising spread quickly from garrison to garrison, and many British civilians as well as officers were massacred.

For a time it looked as though the day of European rule in India had come to an end. Fortunately for the English, however, the mutiny did not spread throughout the whole country. India is too vast and too diversified an area to unite in a common cause and the mutiny was for the most part localized in the northwest provinces. Fortunately, also, an English military expedition was on its way to engage in war with China. The British government promptly called off the Chinese war, sent a fast vessel to intercept the transports, and diverted them to India. After some anxious months, and with much hard fighting, the mutiny was suppressed.

Its suppression.

When the trouble was over, public opinion in England insisted on finding a scapegoat, as it does after all such mishaps. Everybody hastened to put the blame on the company. The existing scheme of government in India was assailed by all parties because it involved a delegation of political authority to a profit-making corporation. People forgot, for the moment, that the company had built up a great empire from the nucleus of a few trading posts, that it had been governing this territory for seventy years under royal supervision, and that there was a credit as well as a debit side to its ledger. But the people of England were in no mood to accept alibis or explanations. They demanded that the whole system of British control over India be reconstructed. Parliament bowed to the clamor. It decreed that the East India Company at once should surrender its political powers and go out of existence.

Finding a scapegoat.

The Act of
1858.

In 1858, therefore, the whole territory passed under the direct control of the crown.¹ India was henceforth to be governed by a viceroy appointed on the advice of the English cabinet. Provision was also made for continuing the secretary of state for India, with rank as a member of the ministry. The secretary of state was to be assisted by a council of fifteen members, of whom the majority were to be persons who had lived in India. This Council for India was to hold its sessions in London. The Indian budget was to be voted by parliament. As for the East India Company, it was given a term of years in which to fit its commercial operations into the new political order. As a promoter of commerce it had been a huge success in its day, but the governmental responsibilities had become too big for any company to carry.

India under
the crown.

India was governed under the Act of 1858 for a little over fifty years. The secretary for India served as a link between the crown and parliament on the one hand, between England and India on the other. His powers were limited, to some extent, by the necessity of acting in accord with the Council for India, of which he was the presiding officer. In India a viceroy, appointed for a five-year term by the crown on the advice of the prime minister, was the head of the administration. He represented the Emperor of India, that is, the British monarch as emperor. He was assisted by two councils, one executive and the other legislative. All the members of the executive council were Englishmen, but the legislative council contained some natives. The legislative council had authority to make laws for India, but all its actions were subject to the ultimate legislative power of the British government.

Rise of a de-
mand for
self-govern-
ment.

Under this scheme of government India came down into the twentieth century. A native population of nearly three hundred millions allowed itself to be ruled by a few thousand Englishmen. The rest of the world wondered why. There were two reasons—the complete lack of unity among the people of India and the adroitness of the English rulers. They were wise enough to refrain from interfering with the social and religious customs of the people. The country, during these fifty years, gave the English no serious trouble. Nevertheless there gradually developed, especially among the educated classes, a strong feeling that India ought to have a larger measure of self-determination.

¹ It was not until 1877, however, that Queen Victoria was proclaimed Empress of India.

The reasons for this are self-evident, or ought to be. They are part of an old drama that has been played on the frontiers of civilization many a time. No scheme of government, however enlightened, altruistic, or benevolent, has any chance of proving satisfactory to all concerned unless it is founded upon the consent of the governed. The world has seen that axiom exemplified a hundred times. White men, at various stages in history, have undertaken to govern "backward" races of black, brown, and yellow men for their own good; but if they have ever been thanked for it the chronicles of colonial history do not record the fact. Government by the best people is not necessarily the best government. As between crude misgovernment by themselves, and the most enlightened administration by strangers, human beings never hesitate to choose the former.

The reasons
for it.

At any rate the desire for self-government became more articulate during the closing years of the nineteenth century. It found expression through the Indian National Congress, an unofficial body of delegates collected from all parts of the country and assuming to represent the general opinions of the people. India, like Ireland, was fostering a home rule movement. But it made little real progress until after the world war. India might have given England a lot of trouble during this conflict, but the country remained loyal in spite of German predictions that it would flame into revolt. Not only that—India actually contributed a large expeditionary force to aid the Allied cause. This imperial patriotism naturally made a favorable impression in England and gave rise to a feeling that India ought to be rewarded by a substantial grant of self-government.

India during
the
world war.

Accordingly, in 1917, the secretary of state for India was sent to Calcutta where he and the viceroy agreed upon a project which they embodied in the Montagu-Chelmsford report.¹ On the basis of this report the British government then prepared the draft of a comprehensive home rule measure which passed parliament in 1919 as the Government of India Act.²

The Govern-
ment of
India Act
(1919).

This Act still forms the constitution of India. It entirely re-

¹ Mr. Montagu was secretary of state and Lord Chelmsford was viceroy. This *Report on Indian Constitutional Reforms* was issued as a public document (Cd. 9109) in 1918. A discussion of it may be found in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chap. viii.

² It received the royal assent on December 23, 1919. The first elections in India were held in November, 1920, and the new central government in India was inaugurated in the early months of 1921.

General provisions of this Act:

Relations with Great Britain.

The viceroy and his executive council.

Emergency powers.

constructed the internal government of the country but it did not make much change in the agencies of British control. The king remains Emperor of India, as under the old order; the secretary of state for India continues to be a member of the British ministry, and serves as the connecting link between the two governments.¹ The Council for India is somewhat reduced in size, and provision is made that it must contain three Indian members, but its advisory functions remain unaltered. In the British parliament a standing committee on Indian affairs has been established, and to this committee all proposals of legislation relating to India are first referred. India also maintains, at her own expense, a high commissioner in London.

The viceroy, or governor-general of India, continues to be appointed by the crown, on the advice of the British prime minister, for a five-year term.² He is assisted by an executive council or ministry appointed by the crown on his recommendation. Three councillors out of the eight must be natives of India. All the members of this council are then nominated by the viceroy to seats in one or the other of the two legislative chambers. Official acts of the governor-general are performed in accordance with the council's advice although in certain contingencies he may act on his own responsibility. The Act of 1919 does not specify that the members of the council shall be responsible to the Indian parliament for the advice which they give the governor-general; and in fact it is well understood that the council cannot be overthrown by an adverse vote of the legislature. The governor-general, moreover, may override the action of the legislature in an emergency by formally "certifying" that any legal provision or item of expenditure is essential to the welfare of India. When he so certifies, his action acquires the force of law. Furthermore, the governor-general has the right, in emergencies, to issue ordinances which do not require the concurrence of the legislature. These ordinances hold for six months only, but they may be reissued.

¹ Down to 1919 the salary of the secretary of state for India had been charged to the Indian budget. This salary is now paid by the British treasury, thereby removing a grievance of long standing.

² The crown also appoints the commander-in-chief, the judges of the high court, and various other high officials. Many of these higher positions and most of the lower ones are held by natives of India. Officials and employees of all grades in India number more than a million and a half, of whom fewer than 10,000 are Englishmen. The Indian civil service is recruited by competitive examination. Large numbers of educated East Indians have entered the service in this way.

Finally, the assent of the legislature is not required in the case of army expenditures, which form a large part of the Indian budget.

So the Act of 1919 did not establish responsible government in India or place the country on a "dominion status." It did not put the viceroy of India on the same plane of responsibility as the governor-general of Canada or Australia. The framers of the Act had to face the probability of deadlocks between the executive and the legislative branches of the government in India. They decided that the executive, in such cases, should have power to make its will prevail,—in other words that the British government should have the last word, for the governor-general acts on instructions from his superiors at home. Nevertheless the new arrangements marked a decided advance upon the old. They gave India a good deal more than Ireland had before the war. But the concessions were far from satisfying the country, as will be seen presently.

There is no full executive responsibility.

The Indian legislature or parliament meets at Delhi.¹ It consists of two chambers, a council of state and a legislative assembly. The former contains not more than sixty members, of whom not more than twenty are ex-officio members, that is, they sit in the council of state by reason of their holding certain administrative offices. The remaining members are elected. The legislative assembly has a membership of one hundred and forty, of whom one hundred are elective, while the remainder are either ex-officio or appointive members. The appointive members are named by the governor-general who is supposed to use his appointing power in such a way as to give representation to whatever important interests have not obtained it at the elections. The Indian legislature is authorized, however, to increase the membership of either chamber by law, and to vary the ratio of elective to non-elective members, so long as at least five-sevenths of the membership is kept elective.

The parliament of India.

Bills may be introduced in either chamber but require the concurrence of both before they are passed. If, however, the legislature fails to make provisions for essential expenditures, or to pass necessary laws, the governor-general may act on his own authority. The normal life of the council of state is fixed at five years, while that of the assembly is three years; but the governor-general may under certain circumstances shorten or lengthen these terms.

Its procedure.

¹ During the summer months the seat of government is moved to Simla.

The suffrage.

By whom are the elective members of the Indian parliament chosen? The suffrage is a rather complicated affair. Prior to 1919 the elective members of the old legislative council were chosen by a complicated scheme of indirect election. This has now been abolished, and the individual voter chooses his representatives directly. But the qualifications for voting are not the same at all elections; on the contrary there are three different voters' lists, one for electing members of the council of state, another for the legislative assembly, and a third for the legislatures of the various provinces. Each list is based upon the ownership or occupancy of property, or the payment of taxes, or the prior tenure of certain designated offices. The differences are chiefly in the amount of property or taxes required to qualify, the amount being lowest in the case of the provincial lists. It is somewhat higher for elections to the legislative assembly, and highest of all in the case of lists used for the council of state.¹ Women are allowed to vote on the same terms as men, but this concession is little more than a gesture because women in India hardly ever own property in their own right. Illiteracy is not a bar to voting and it is estimated that a majority of the registered voters for provincial elections are unable to read or write.

The number of voters.

Under these arrangements more than six million persons are qualified to vote at provincial elections, or about ten per cent of the adult male population. A little over one million names are on the voters' lists for the legislative assembly, but fewer than thirty-three thousand are enrolled for council of state elections. It will be seen, therefore, that the Act of 1919 stopped a long way short of establishing universal suffrage in India. Universal suffrage would provide India with at least a hundred million voters. On the other hand the placing of ballots in the hands of even six million people represents a considerable step toward the establishment of popular government. The proportion of voters to population in India to-day is larger than it was in England a hundred years ago. It may be taken for granted moreover, that the present suffrage will be widened as time goes on.

¹ To set forth the various requirements would take more space than can be afforded in this book, for not only do they differ in the three classes of elections but a distinction is also made between the requirements in urban and in rural constituencies. A table showing the various requirements may be found in E. A. Horne, *The Political System of British India* (London, 1922), p. 109. A full discussion of the suffrage requirements may also be found in the *Report of the Indian Statutory Commission* (2 vols., London, 1930), especially Vol. I, pp. 190 ff.

The constitution of 1919 assigns to the government of India a wide range of powers, including provision for defense, foreign affairs, relations with native states, railways and shipping, post offices and telegraphs, currency and coinage, customs and commerce, together with civil and criminal law. In addition, the central government has authority in all other matters which have not been expressly assigned to the provincial administrations. Provision is made, however, for the shifting of jurisdiction from one government to the others and vice versa. With the assent of the governor-general the central government may assume any function which the Act has conferred on the provincial authorities, and with the same sanction the latter may invade the field of jurisdiction which has been given to the central government. Thus the division of powers has not been made hard and fast.

Powers of the central government.

Experience in self-government is best acquired in the lower ranges of a political system—in the provinces, districts, towns, and villages. Men must learn to be faithful over a few things before they can safely be made rulers over many. Hence it is unwise to begin by infusing a homeopathic dose of democracy into the national government; a better plan is to teach an untutored people the art of free government by giving them, first of all, a liberal measure of control over their own neighborhood affairs. This lesson of political experience was respected by the British parliament in framing the Act of 1919. It explains why this measure gives a larger modicum of home rule to the provinces than it gives to India as a whole.¹ There are fifteen of these governments in India of which nine are under governors and six under chief commissioners.²

The provincial governments.

The distribution of powers between the central and provincial governments gave the framers of the constitution much difficulty, but the problem was finally settled in an ingenuous way. A distinction is first made between *central* subjects and *provincial* subjects. Broadly speaking all matters of local scope are listed as

The distribution of central and provincial powers.

¹ The Act of 1919 contained only the statutory framework of India's new constitution. It left a great mass of detail, including such matters as the definite allocation of duties among the various authorities, to be dealt with by Devolution Rules. These rules were to be made by the central government in India with the approval of the British authorities. They were so made and were then ratified by resolutions in the House of Commons and House of Lords, in this way being given the force of law.

² These are the presidencies of Madras, Bombay, and Bengal; the United Provinces, the Punjab, Behar, and Orissa, the Central Provinces, Assam, and Burma. Under chief commissioners are the Northwest Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar islands.

provincial subjects and are to be dealt with by the provincial authorities. The most important central subjects are national defense, foreign relations, relations with the native states, railways, the coinage, customs and certain other sources of revenue, criminal law and procedure, and "all matters not specifically declared to be provincial subjects." The residuum of power rests, therefore, with the central government and not with the provinces—which is the reverse of the arrangement made by the constitution of the United States.

But the classification of powers does not stop here. Provincial powers are further divided into *transferred* matters and *reserved* matters. With respect to the transferred fields of jurisdiction (which include education, sanitation, public health, agricultural and industrial development, roads, public buildings, and local government), neither the British government nor the central government of India has any right to interfere except in certain cases of emergency. So far as these matters are concerned, therefore, the provinces of India are virtually endowed with home rule. But with reference to the reserved subjects, among which the most important are the administration of justice and the control of police, the provincial governments remain under direct supervision of the central authorities at Delhi. It is the expectation, of course, that these reserved fields of jurisdiction will gradually be turned over to the provinces if they show themselves capable of handling them.

How this complicated the provincial government.

This distinction between transferred and reserved jurisdiction somewhat complicates the structure of the provincial governments. The administration of each province is in the hands of a provincial governor, appointed by the crown on the advice of the secretary of state for India. The governor is assisted by an executive council, usually of four members, similarly appointed. All reserved matters are dealt with by the governor and his council alone. For their actions in this field they are responsible only to the provincial legislature. But the provincial governor is also assisted by ministers (usually two or three of them), who are responsible to the provincial legislature, and as respects all transferred subjects the governor must be guided by the advice of these ministers "unless he sees sufficient cause to dissent from their opinion." Much may be made of this proviso as a check on the supremacy of the provincial legislature, but if governors follow a

long-established tradition in British colonial administration they will not disregard the advice of their responsible ministers except in emergencies. The provincial ministers in India have the same rank as members of the executive council; but ministers and executive councillors do not sit together as a cabinet.

This division of jurisdiction, with some of the governor's advisers responsible to the legislature and some not, with one group of advisers handling transferred subjects and another group managing reserved subjects—this curiously bifurcated form of government is known to political scientists as a *dyarchy*. The word was coined by the historian Mommsen to describe the dual government which existed in certain provinces of the early Roman empire, where the emperor required the concurrence of the Roman senate for some of his acts but not for others. As applied to the provinces of India this dyarchy is not intended to provide an ideal or permanent scheme of administration. It is a compromise between home rule in all matters, and home rule in none. It was seized upon as the best practicable way of dealing with a difficult problem.¹

The dyarchy.

The legislature of each province consists of a single chamber containing three classes of members—appointive, official, and elective. First, the governor is authorized to appoint a certain number of members, the number varying in the different provinces. Second, the members of the executive council (usually four) together with certain other high administrative officials, have ex-officio seats in the provincial legislature. But these two groups taken together must not constitute more than thirty per cent of the whole membership. The third element, constituting at least seventy per cent of the legislature, is made up of members elected by the voters who are enrolled on the provincial lists.

The provincial legislatures.

Members are elected from both general constituencies and special constituencies, and this is also true of elections to the legislative assembly of India as a whole. By a *general* constituency is meant all the voters living in a certain geographical area. By a *special* constituency is meant all the voters of a designated race, religion, or vocation living in a certain area—for example, the Sikhs in the Punjab or the non-Brahmins in Madras, or those of a certain economic or educational status—large land holders, owners of factories and other industries (through their chambers of commerce

General and special constituencies.

¹ We speak of the Philippines as having a very large measure of home rule, but under the Jones Act all subjects are virtually reserved subjects.

and other associations), and graduates of universities. Each university, for example, elects one member to the provincial legislature. It is as though the Jews, the Baptists, the Socialists, the tobacco-growers, and the factory owners in every American state were each allowed one representative for fear that otherwise they would be left without any representation at all.

The reason
for this ar-
rangement.

This arrangement of constituencies, absurd as it may seem, is made necessary by the fact that in India the whole social structure rests upon caste and religion. The cleavages between the different castes and sects are so wide that no candidate who belongs to one of them would ever get votes from any other. Moslems will not vote for a Hindu candidate no matter what his qualifications may be. There is in India no consciousness of a common citizenship which transcends all divisions of class and religion. In India it is not "my country first," but my race, my caste, or my religion first. This bottomless gulf of distinctions, based on historic differences, is something that few outsiders ever appreciate. Democracy postulates toleration; without it no democratic government can ever function. But in India there is no toleration. That is why a minority group or sect would get no representation at all unless assured of it by some such arrangement as these personal constituencies.

Attitude of
the people
toward the
Act of 1919.

The constitution of 1919 was a compromise, and as such its provisions have not satisfied anybody. Many British residents in India feel that it transfers too much self-government to a people who are not prepared for it. The leaders of the home rule movement, on the other hand, complain that it does not go far enough. They declare that it is merely black despotism painted white, that it gives the forms of self-government while withholding the substance. Accordingly, when the new government was put into operation the nationalist leaders advised their followers to have nothing to do with it. They urged the voters to stay away from the polls, and large numbers followed their advice. This was part of their policy of "non-coöperation." But India is not so constituted that it can do anything unanimously and the advice of the nationalist leaders was by no means generally followed in all parts of the country.

Gandhi and
non-coöper-
ation.

So the new government began to function with a considerable amount of popular support. The Non-Coöperators, on the other hand, did not cease their propaganda. On the contrary they widened their objective by advocating passive resistance not only in

politics but in every other field where British interests were concerned. The people were advised to buy no British-made goods, to accept no English money, to leave their taxes unpaid, and ignore their British suzerains in every way. The movement found its leader in Mahatma Gandhi, a Hindu seer with an aspiration to martyrdom. His ideas, a strange mixture of mysticism and materialism, are rather difficult for any western mind to follow. But millions of his fellow Hindus believe in them and their faith has given England no easy problem to solve. Passive resistance inevitably develops into active; there is no way to prevent its doing so. That is what has happened in India, although the disorders have thus far been localized.

Parliamentary leaders in England did not regard the Act of 1919 as a definitive solution of the Indian problem. They looked upon it as a *modus vivendi* until more study could be given to the situation. The Act provided, in fact, that after ten years a re-study of the situation should be made with a view to further changes. Accordingly a statutory commission under the chairmanship of Sir John Simon was sent out to make inquiry and to submit recommendations, which it did in 1930. The report of this commission goes fully into all questions connected with the workings of the present governments in India, both central and provincial, and presents a large amount of authoritative data.¹

The Simon
Commis-
sion (1930).

The recommendations of the Simon Commission were by no means radical. The commission proposed an all-Indian federation in which both the provinces and the native states (see p. 352) should be joined, each unit in the federation to have a measure of self-government according to its capacity. The executive headship of the central government, according to the new plan, would remain in the viceroy who would select and appoint his executive councillors with the same qualifications as at present. But the commander-in-chief of the British army in India would cease to be a member of it and one of the executive councillors would have the function of leading the federal assembly, thus becoming a sort of prime minister. The viceroy would retain his present emergency powers. "There must be in India," says the commission, "a power that can step in and save a situation before it is too late. We desire to give the fullest scope for self-government, but if there is a breakdown, then an alternative authority must coöperate unhampered."

Its recom-
mendations:

1. Execu-
tive.

¹ *Report of the Indian Statutory Commission* (2 vols., London, 1930).

2. The Indian parliament.

As for the Indian parliament the commission recommended that the council of state be retained substantially as constituted by the Act of 1919 and with the same functions, but that the elective members should be chosen by the provincial authorities. The legislative assembly would henceforth be known as the federal assembly and would be reconstituted on a new basis to give representation to the various provinces and other areas according to population. The defense of India would be taken out of Indian jurisdiction and made an imperial responsibility. The viceroy, as representative of the imperial authorities, would have full charge of it.

3. The provincial governments.

Most of the changes recommended by the Simon Commission relate to the provincial government. The dyarchy would be abolished. The conduct of provincial administration (without any distinction between transferred and reserved subjects) would rest with the provincial cabinet, the members of which would be chosen by the governor of the province but would have "joint responsibility for action and policy." The ministers would thus be accountable to the provincial legislature for their actions in all fields. But in the event of an emergency the governor would have power to intervene, subject to the direction of the viceroy, regardless of the ministers or the legislature.

The provincial legislatures would be enlarged and the suffrage widened. Under the proposed extension the total number of voters in provincial elections would be trebled. Certain important minorities would be protected by reserving them a designated number of seats in the provincial legislature. Finally, the provinces would be given enlarged financial resources.

The future.

Whether a new constitution for India will be forthcoming as a result of these recommendations is for the future to determine. The new scheme falls far short of what the Indian Nationalists have been demanding. The retention of praetorian emergency powers in the hands of the viceroy and the provincial governors is regarded by them as a highly objectionable feature. The Simon recommendations go closer to "dominion status" than does the Act of 1919, but they do not propose to carry India the whole way.

The native states.

What has been said concerning the operations of the Act of 1919 has reference to about two-thirds of India. The rest is not governed under this Act but consists of native states, or protected states. Some of them are large and important (such as Hyderabad, Mysore, Baroda, Gwalior, Indore, Kashmir, etc., as shown on the

accompanying map), but most of them are very small. All these states remain under native rulers who carry on the government with the assistance of a British minister or resident, as he is called. If the native ruler conducts his government properly there is very little interference with him. On the other hand the British authorities have not hesitated to interfere, and even if need be to depose a native ruler, if he proves corrupt or incapable. In 1921 there was created a Chamber of Princes in which all the major native states are individually represented, while the smaller ones have representation by groups. This chamber has no mandatory powers but affords a means whereby the native rulers can have matters of common interest discussed. Some of the larger states, however, have thus far declined to be represented in it. The Simon Commission has recommended that the native states, as well as the provinces, be given representation in the Indian federal assembly.

The relations of England with India will undergo change as time goes on, but it is difficult to predict what direction these changes will take. There can be no greater futility than for anyone in the Occident to predict what the Orient will do. "As far as the East is from the West," wrote the Psalmist, and he was right. The distance, psychologically speaking, is beyond measurement. Great Britain means to do well by India, but this does not mean that democratic institutions of the European type ought to be bodily transplanted there. The institutions of a country should fit the genius of its people. Responsible cabinets, universal suffrage, proportional representation, bills of rights, trial by jury, and writs of habeas corpus are institutions which have developed among Europeans in the temperate zones. It is by no means certain that they are well adapted to use in tropical lands. Political democracy in the West rests on social democracy, and there is no social democracy in India. Can a true democracy be reared upon the caste system which exists in India any more than it could be built upon the system of privileged orders in France before the Revolution?

One can do no better, in closing this chapter, than to quote from the concluding paragraphs of the Simon Report. "No one of either race ought to be so foolish as to deny the greatness of the contribution which Britain has made to Indian progress. It is not racial prejudice, nor imperialistic ambition, nor commercial interest, which makes us say so plainly. It is a tremendous achievement to have brought to the Indian subcontinent and to have

The future
of govern-
ment in
India.

applied in practice the conceptions of impartial justice, of the rule of law, of respect for equal civic rights without reference to class or creed, and of a disinterested and incorruptible civil service. These are essential elements in any state which is advancing towards well-ordered self-government. In his heart, even the bitterest critic of British administration in India knows that India has owed these things mainly to Britain. But, when all this is said, it still leaves out of account the condition essential to the peaceful advance of India, and Indian statesmanship has now a great part to play. Success can only be achieved by sustained good will and co-operation, both between the great religious communities of India which have so constantly been in conflict, and between India and Britain. For the future of India depends on the collaboration of East and West, and each has much to learn from the other. We have grown to understand something of the ideals which are inspiring the Indian national movement, and no man who has taken part in working the representative institutions of Britain can fail to sympathise with the desire of others to secure for their own land a similar development. But a constitution is something more than a generalisation: it has to present a constructive scheme."

For historical details the reader may be referred to Sir Alfred Lyall's *Rise and Expansion of British Dominion in India* (London, 1907); Sir Valentine Chirol's *India, Old and New* (New York, 1921); or to Sir Verney Lovett's *India* (London, 1923) which contains a good bibliography. C. M. P. Cross, *The Development of Self-Government in India, 1858-1914* (Chicago, 1923) is an informing book on the period, and also contains a bibliography. Two volumes in the Cambridge History of India deal exhaustively with *British India, 1497-1858*, and *The Indian Empire, 1858-1918*. Both have elaborate bibliographies. Mention should also be made of W. J. A. Archbold, *Outlines of Indian Constitutional History* (London, 1926) and of B. K. Thakore, *Indian Administration to the Dawn of Responsible Government* (Bombay, 1926).

The best book on the old governmental system is Sir Courtney Ilbert's *Government of India* (3rd edition, London, 1915). A supplementary volume, bearing the same title, was published in 1922, and another, entitled *The New Constitution of India*, by Sir Courtney Ilbert and Lord Meston, in 1923.

On the political system established by the Act of 1919 there are several useful volumes, notably B. G. Sapre, *The Growth of the Indian Constitution*

and Administration (Sangli, India, 1924); E. A. Horne, *The Political System of British India* (London, 1922); D. N. Banerjee, *The Indian Constitution and its Actual Working* (London, 1926); and Sir T. B. Saprú, *The Indian Constitution* (Madras, 1926). J. Ramsay MacDonald's book on *The Government of India* (London, 1919) deals largely with conditions prior to the establishment of the new political system, but contains excellent chapters on such topics as the protected states, the Indian civil service, the administration of justice, and the rise of nationalism.

On present-day politics and problems, mention may be made of Claude H. Van Tyne, *India in Ferment* (New York, 1923); Lajpat Ráyá, *Political Future of India* (New York, 1919); Lord Curzon, *British Government in India* (London, 1925); Sir V. Lovett, *A History of the Indian Nationalist Movement* (London, 1920); E. Beran, *Thoughts on Indian Discontents* (London, 1929); M. K. Gandhi, *Young India* (London, 1927); C. F. Andrews, *Mahatma Gandhi's Ideas* (London, 1929); and P. P. Pillai, *Economic Conditions in India* (London, 1925).

CHAPTER XIX

BRITISH DOMINIONS AND COLONIES

Our hold on the colonies is in the close affection which grows from common names, from kindred blood, from similar privileges and from equal protection. These are ties which, though light as air, are strong as links of iron.—*Edmund Burke.*

The wishes, the desires, and the interests of the people of these countries must be the dominant factor in settling their future government.—*David Lloyd George.*

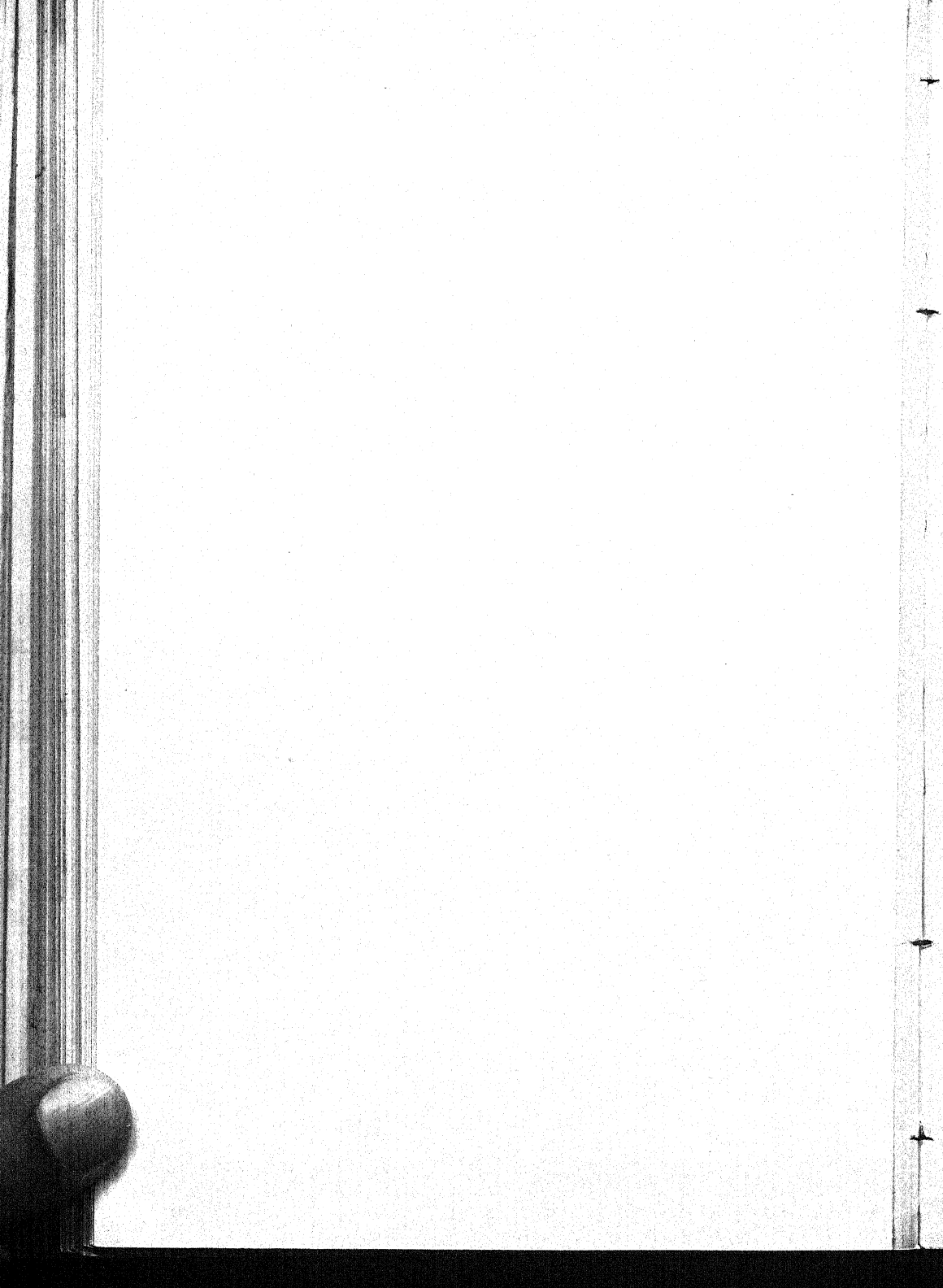
Area and
population
of the em-
pire.

The British empire, or British commonwealth of nations as it is now called, comprises more than one-quarter of the land surface of the globe.¹ Its area exceeds twelve million square miles. Its total population is about four hundred and fifty millions, of which India contributes more than two-thirds. Now the entire population of the world is estimated to be less than two billions, hence one person out of every four on the earth's surface is a British subject. In people of European birth or descent, however, the British empire makes no such impressive showing, for it contains only sixty millions of them, which is about half the population of the United States.

Its scat-
tered char-
acter.

The British commonwealth of nations consists of territories in all six continents. In Europe there are the British Isles including Ireland, the Isle of Man, and the Channel Islands, together with Gibraltar, Malta, and Cyprus. In North America there is the Dominion of Canada (with its nine provinces), together with Newfoundland, Jamaica, and various other islands in the West Indies. In Central and South America there are British Honduras, British Guiana, and the Falkland Islands. In Australasia there are the Commonwealth of Australia (with its six states), the Dominion of New Zealand, the crown colony of New Guinea, and various South Pacific islands. In Africa the British territories include not only the Union of South Africa (with its four constituent states), but Rhodesia, Nigeria, Sierra Leone, Gambia, Uganda, Kenya, and Zanzibar together with various other colonies, protectorates, and

¹ This excludes, of course, the Arctic and Antarctic regions.



mandated territories. The Sudan is nominally under the joint control of Great Britain and Egypt, but since 1924 Britain has assumed virtually complete jurisdiction over this vast area.

In Asia the Indian empire, including the protected states, is the most important member of the British commonwealth, but Ceylon, the Straits Settlements, the Malay States, Sarawak, North Borneo, and Hongkong are also included within the list of British territories. Palestine and Iraq (Mesopotamia) are likewise, for the moment at any rate, under British supervision.¹ Egypt, before the outbreak of the world war, was technically a part of the Turkish empire but virtually under British suzerainty. When the Turks cast in their lot with the Germans the British government declared a protectorate over Egypt and this status continued until 1922 when an Anglo-Egyptian agreement conceded to Egypt the rank of an independent state, subject to various reservations.²

The growth of Greater Britain is one of the epics of history. There is no parallel to it except the expansion of Rome in ancient times. Yet the British commonwealth of nations was not planned or premeditated; it was accomplished in a prolonged fit of absent-mindedness. England expanded without a policy of expansion. A commercial and industrial nation by reason of geographical good fortune, she naturally became a maritime and naval power. Her merchants traded to distant lands; her people made settlements there; and her navy was able to protect them. It was not the British government that created the empire; it was the British people. The great exodus of Englishmen was not inspired or encouraged by the government. In English colonization the trader and the emigrant went first; the government came lumbering along in the rear. Somebody has said that the British empire was created by the Irish in order that the English might govern it for the benefit of the Scotch. That remark is too bright to be literally true, yet it points to the fact that all three races have taken a hand in discovering, conquering, governing, and exploiting this vast dominion over palm and pine.

Historically the growth of the overseas empire falls into two general periods. The first extended from 1600 (when the British East India Company was organized) down to 1783, when the

Nature of
the imperial
develop-
ment.

The two
great pe-
riods of em-
pire-build-
ing.

¹ See *below*, p. 371, *note*.

² These are only the more important items in the list. The minor ones are also shown on the accompanying map.

Treaty of Versailles recognized the independence of the United States. During this era of nearly two centuries Great Britain conquered Canada from France, secured for her traders a free hand in India, and founded thirteen colonies along the Atlantic seaboard. The loss of these colonies was a seemingly irreparable disaster to the imperial cause, but it taught the British government some lessons that proved to be worth the cost. These lessons were turned to useful account during the second period (from 1783 to the present day) in which an even more extensive range of territories has been acquired. The later acquisitions have been made in a variety of ways—by discovery and colonization (as in Australasia), by conquest (as in Africa), and by the peaceful expansion of territories in which a foothold had already been acquired (as in Canada and India). The British commonwealth of to-day is vaster in extent and more populous than the one which was rent asunder by the American Revolution.

The American Revolution as a dividing point.

The American Revolution is the most conspicuous landmark in the history of Greater Britain. It closed one era and opened another. It taught the mother country a lesson, as has been said, but not the lesson that most Americans would have expected England to learn from the happenings of 1776–1783. There is no warrant for the hackneyed assertion that the American War of Independence impelled Britain to give her remaining colonies a full measure of political freedom. The colonies which did not revolt, but remained within the empire, obtained no substantial concessions in the way of self-government as an outcome of the Revolutionary war. Their political organization stood unaltered; their governors continued to be appointed from London and remained independent of colonial control. No British colony received a full measure of self-government for more than a half-century after the founding of the United States. The struggle for self-government had to be fought over again, as it was in Canada during the years 1835–1840.

What Britain learned from the Revolution.

The lesson which Great Britain did learn from her experience with the thirteen American colonies, however, was in relation to the control of trade. Therein the British authorities rightly interpreted the underlying causes of the Revolution. It was a series of economic grievances that led the American colonists to rebel. There were some political grievances also, to be sure, but these could probably have been adjusted without resort to hostilities.

The American colonies did not take up arms because they wanted their governors to be responsible to the legislature, or because the colonists desired manhood suffrage. They did not endow themselves with these things after the Revolution. What they resented above all else was British interference with their trade and economic life. They had no patience with the doctrine that colonies existed for the enrichment of the mother country. The British government, when the Revolution was over, appreciated the force of this grievance, and the remaining colonies were treated with a new liberality in matters of trade.

It was in this sense that the American Revolution paved the way for the upbuilding of a new British empire. It sounded the death knell of the Navigation Acts. It gave a body blow to the whole mercantilist doctrine. As between economic self-determination and political self-government the former is by far the more vital to colonial prosperity, although both logically go together. And Great Britain has now given both to those of her dominions which seem capable of using their freedom worthily. Canada, Newfoundland, Australia, New Zealand, the Irish Free State, and South Africa are to all intents self-governing nations. They are democratic republics in everything but name. It is hard to classify the component parts of the British commonwealth of nations because it is a loose-jointed affair in which kingdom, empire, free state, dominion, commonwealth, union, colony, protectorate, protected state, condominium, and mandated territory are pieced together without symmetry, system, or apparent cohesion.¹

The new commercial policy.

Since Roman times the world has never seen such a miscegenation held together by the bond of a common allegiance. These territorial units of government which make up the British commonwealth are racially as diverse as it is possible for a far-flung empire to be. They comprise some great areas with populations almost entirely of European birth or descent, such as Canada and Australia. In others, such as the Union of South Africa, the dominant races are of European ancestry, but there is also a large na-

The diversity of states and races.

¹ This heterogeneity has seemed to many foreign observers a source of weakness. When I was a student at the University of Berlin, three decades ago, I heard a lecture on the British colonial system by a distinguished German scholar. "The British empire," he said, "is held together by a rope of sand. If ever a great war puts pressure upon this jerry-built affair, it will collapse with a crash." How different, he explained, from the German empire, with its geographical solidarity and political centralization. Nevertheless, when the pressure came it was the German, not the British empire that collapsed.

tive element. And in the greater portion of the empire the native races far outnumber the Europeans. With this polyglot diversity in race, language, religion, law, economic interests, and social traditions, it is not surprising to find that no two parts of the British commonwealth are governed exactly alike. They range all the way from dominions with complete self-government to tropical colonies with no self-government at all.

How they
may be
classified:

1. Self-gov-
erning
dominions.

In a broad way, however, all the territories under the British flag (apart from the United Kingdom, the Channel Islands, the Isle of Man, Ireland, and India) may be arranged into six main groups. The first includes the self-governing dominions. There was a time when these dominions were officially known as colonies but this designation seemed to carry a flavor of subjection and it is not now used. The self-governing members of the British commonwealth (apart from the Irish Free State and Northern Ireland) are five in number, namely, Canada, Newfoundland, Australia, New Zealand, and South Africa. To these five we may properly add a sixth—Southern Rhodesia, which is virtually self-governing. Second there are some territories which have a diarchic or semi-autonomous government, that is, self-government with some powers reserved. India, as has been shown, is perhaps the best example, but Malta is in the same category.

2. Self-
governing
territories
with some
reserva-
tions.

3. Partly
autonomous
colonies.

Third, there are territories without complete self-government in any field, their general administration being under the control from London. Some of these have colonial legislatures, the upper chamber of which is appointive and the lower chamber elective (Bermuda, the Bahamas, and Barbados). Some have legislative councils of a single chamber in which there are both appointive and elective members. In some of the latter (Ceylon, Cyprus, and Jamaica) the elective members form a majority; in others (Hongkong, Nigeria, Trinidad, etc.) they do not. A few (including Gibraltar, Ashanti, and Basutoland) have no legislative councils at all. All the territories in this third group are sometimes called crown colonies but that term is misleading because there are some of them (e.g., Bermuda and British Honduras) in which the crown does not have power to legislate by order-in-council.

4. Protec-
torates and
protected
states.

Fourth come the protectorates such as North Borneo and Sarawak which possess internal autonomy but whose foreign affairs are controlled by Great Britain. In the same category are the protected states, especially the protected states in India, which

are ostensibly independent and whose government is carried on by native rulers under the general direction of a British official who is usually known as the minister resident. Fifth are the mandated territories which are governed in trust for the League of Nations, either directly by Great Britain as in the case of Palestine, or by one of the self-governing dominions, as in the case of Western Samoa where the mandate is held by New Zealand. Iraq is also held under a mandate but on terms arranged by an Anglo-Iraq treaty. Finally, there are some territories which do not come within any of the foregoing classes. The Egyptian Sudan is neither a dominion, a colony, a protectorate, nor a mandated territory. It is technically a condominium, an area governed by Great Britain and Egypt jointly, but since 1927 England has done the governing alone. The New Hebrides are governed under a condominium with France.

5. Mandated territories.

6. Condominions.

It will be seen, therefore, that the territories over which British jurisdiction extends, either in whole or in part, do not lend themselves to any simple classification. Great Britain has no "plan" of colonial administration. Every situation has been met, as it arose, by whatever action seemed to fit the case. The British government has never gone on the principle that one colony has the right to any concession because others have received it. Anomalies and inconsistencies have of themselves never caused much worry in Downing Street. Until a few years ago the little island of Ascension, off the west coast of Africa, was administered by the admiralty, which merely placed a naval officer in command and rated it as a battleship! There would not be much point in attempting a detailed classification of all the red patches on the map of Great Britain anyhow, for territories are constantly passing from one class into another.

The difficulty of making an exact classification.

CANADA

Each of the self-governing dominions has a constitution, or, what is the equivalent of a constitution, in other words a comprehensive act of parliament on which its government is based. Canada is the most populous of these dominions. By the census of 1930 it had about ten million people, which is not much more than the population of Pennsylvania. About one-third of the people are of French descent, for the older sections of Canada were originally settled by colonists from France.

The dominions.

Canada.

Early history.

These venturesome Gallic fishermen, traders, and missionaries not only established their settlements along the St. Lawrence and in what is now Nova Scotia, but penetrated into the valleys of the Mississippi and Ohio. Others went northward to Hudson Bay and overland to the far northwest. France ruled this territory with a stern hand, tolerating no vestige of self-government and permitting no democratic institutions to grow. When Canada had a population of about 50,000 the half-century of conflict between France and England took place, ending in the capture of Quebec by the English. By the treaty of 1763 France agreed to withdraw from Canada and Great Britain took over the government of the colony. A considerable migration from England followed the conquest, and in time the new colonists outnumbered the old. Many of these new colonists moved into the territory which now forms the provinces of Ontario, Nova Scotia, and New Brunswick. In each case there was duly established a government consisting of a governor appointed by the crown, a council appointed by the governor, and an elective assembly. The assembly, however, had no means of controlling the governor or his council. What England established in Canada at the outset was a system of representative, but not responsible government. In other words it was similar to that which existed in the thirteen American colonies before the Revolution.

Lord Durham's mission.

Under this arrangement the governments of Upper Canada (now Ontario), Lower Canada (now Quebec), and the various territories now known as the Maritime provinces (Nova Scotia, New Brunswick, and Prince Edward Island) were carried on until about 1840. The system did not suit the masses of the people who felt that the entire government ought to be within their control, and as time went on the popular discontent began to assert itself openly. The home government made no move, however, and in 1837, both Upper and Lower Canada went simultaneously into rebellion. The uprisings were not formidable and both were quelled without great difficulty; but the British government had become alarmed and decided to explore the causes of colonial discontent. Accordingly it sent out to Canada, to serve as high commissioner, a young and gifted Whig nobleman, the Earl of Durham. He was instructed to assert the authority of the crown, to inquire into the colonial grievances, and to recommend such changes in the methods of government as he might think proper.

The Durham mission to Canada became noteworthy because it resulted in the preparation of an exhaustive and brilliant report in which the whole philosophy of colonial government was discussed. Durham did not prove himself a successful administrator, but his analysis of colonial grievances was masterful. He analyzed the source of the trouble with extraordinary astuteness. His report has become a classic among state papers, for it went into the whole question of what the relations of a mother country to her colonies ought to be. Even to-day, after the lapse of almost ninety years, it ranks as one of the best official reports ever written.¹

And his
famous
Report.

Durham recommended that Upper and Lower Canada be united into a single province and given a full measure of self-government. He urged that all branches of colonial administration be made responsible to the people. It was his expectation that if this was done a union of all the colonies in British North America might eventually be formed. His advice was followed and his expectations realized. Within a few years the British government gave instructions that the governor of the two united provinces should conform to the principle of executive responsibility. Some time later a scheme of federation for all the provinces was prepared in Canada and this was presented to the British parliament. It was enacted by the latter in 1867 as the British North America Act and continues to serve as the constitution of the Dominion of Canada. This Act established a federal government of the parliamentary type, each of the five provinces being given a provincial government with assigned powers. Since 1867 the number of provinces has been increased to nine.

The Con-
federation
of 1867.

The government of Canada bears a superficial resemblance to that of the United States in that there is a division of powers between the federal and the provincial governments. Matters of nation-wide importance are placed within the jurisdiction of the dominion authorities; while those of a local character are left to the provincial governments. The British North America Act of 1867, like the Constitution of the United States, contains a definite enumeration of powers, but in one essential feature the two documents stand in contrast. In the United States all powers not definitely granted to the federal government remain with the states;

Its general
nature.

¹ John George Lambton, Earl of Durham, *Report on the State of Affairs in the Canadas* (London, 1839). A reprint of this report, without the valuable appendices, was published by Messrs. E. P. Dutton & Company, New York, in 1902. The most recent discussion of this report is Chester W. New, *Lord Durham* (Oxford, 1929).

in Canada all powers not definitely reserved to the provinces go to the central government. This provision was dictated by a feeling among the Canadian leaders of 1867 that the constitution of the United States had not made the national government strong enough, and that the Civil war might have been avoided if the individual states of the union had not been left with so much authority.¹

The governor-general.

The titular chief executive in Canada is a governor-general appointed by the crown for a five-year term. The appointment is made on the advice of the British cabinet and has usually gone to some member of the British nobility.² The governor-general performs substantially the same duties as those imposed upon the king of England. He summons and dissolves the dominion parliament, gives the assent of the crown to legislative measures, and makes appointments to office,—all on the advice of his ministers. These ministers are responsible to the Canadian House of Commons. Canada maintains a high commissioner in London as a medium of communication with the imperial government. She also maintains her own minister in Washington and communicates with the state department through him, not through the British ambassador.

The cabinet.

The Canadian political system closely follows the English model in providing for a responsible cabinet. This cabinet is chosen, as in England, by a prime minister whose responsibility to the House of Commons is exactly the same as at Westminster. So the real chief executive of the dominion is not the governor-general but the prime minister, who is invariably the leader of the majority party in the Canadian House of Commons. Each member of the cabinet must have a seat in the Canadian parliament and the whole cabinet must resign, as in England, whenever it loses the confidence of a majority in the House.

The Dominion Parliament.

The parliament of Canada consists of two chambers, a Senate and a House of Commons. Not having a peerage (and having no desire to create one) it was impracticable to model a Canadian Senate on the British House of Lords. Nor was it thought advis-

¹ The difference, however, is not so great as might be supposed from this statement. The Canadian provinces have acquired some powers by judicial interpretation of the Act. See the author's *American Influences on Canadian Government* (Toronto, 1929), pp. 26-32.

² At the imperial conference of 1930, however, it was agreed that hereafter the appointment of the governor-general should be made on the nomination of the Dominion government.

able to follow the example of the United States to the extent of having senators chosen by the various provinces.¹ It was decided, therefore, that the Canadian Senate should be composed of 96 members appointed for life by the governor-general on the advice of the prime minister. Twenty-four are appointed from each of the four regional areas of the dominion,—Ontario, Quebec, the Maritime provinces, and the Western provinces.

Like the Senate of the United States the Canadian upper chamber has concurrent legislative power with the lower house except as regards money measures. There is no provision in Canada, as in Great Britain, for solving a deadlock between the two chambers by having the Commons reënact a measure three times. When the Canadian Senate rejects a bill which has passed the House of Commons there is no way of making the will of the latter prevail. In practice, however, important measures have not often been rejected. The Canadian Senate has virtually accepted the doctrine that under ordinary conditions the House of Commons ought to take the chief responsibility for lawmaking and that its own work should be confined to the revision and perfecting of bills sent up to it. The Senate, therefore, plays no vital part in the government of the Dominion. It does not share in the control of the cabinet. Its influence in Canada is certainly no greater, and on the whole it is probably less than that of the House of Lords in Great Britain. All sorts of proposals have been made to reform, and even to abolish, the Canadian Senate but thus far none of them have found much favor.²

The Canadian Senate.

The Canadian House of Commons bears a close resemblance to the American House of Representatives. Its members are elected from parliamentary districts or constituencies—one from each. These constituencies are approximately equal in population and redistricting takes place (as in the United States) after every decennial census. The total membership of the House of Commons at the present time is 234.³ The maximum term during which a

The House of Commons.

¹ It will be remembered that at the time the Canadian constitution was being formed (1867) the United States Senate was not regarded as a striking success. There was a widespread feeling that the equal representation of the states in the Senate had helped to make a peaceful settlement of the slavery issue impossible.

² On the organization and powers of this chamber the best book is Robert A. McKay, *The Unreformed Senate of Canada* (Oxford, 1926).

³ The Canadian constitution provides an ingenious safeguard against such repeated increases in the size of the House of Commons as have taken place in the American House of Representatives. The quota of members from the Province of

House of Commons may sit is five years, but the House may be dissolved at any time by the governor-general on the advice of the prime minister. Such dissolutions, however, have been less frequent than in England.

How its
members
are elected.

As respects the suffrage Canada has fallen into line with the United States. Any British subject twenty-one years of age or over, male or female, is entitled to vote after one year's residence in Canada provided he (or she) has resided in the constituency for two months. And any qualified voter may become a candidate for election. There are no primaries for the selection of candidates, as in the United States. Nominations are made, in each constituency, by party conventions. The voting is by secret ballot and the ballots bear no party designations.

Its powers.

In Canada, as in England, the House of Commons is the real pivot of legislative power. It controls the cabinet. All financial measures must originate in the House, and as a matter of practice most other measures originate there also. Bills are introduced, referred to committees, debated and voted upon, and then go to the Senate for concurrence. A distinction is made, as in the Mother of Parliaments, between public bills and private bills. There is a speaker, but the English tradition of reelecting him to his office so long as he remains a member of the House is not followed in Canada. When a new government comes into power it elects a new speaker from its own ranks. The standing rule of the British House of Commons that no proposal to spend public money will be considered unless it is introduced in the name of the crown (that is, by a member of the cabinet) has been adopted in Canada and this gives the cabinet a large measure of control over the whole field of public finance.

Political
parties in
Canada.

Political parties exist in Canada as in all other countries having free government. In nomenclature the Canadian parties resemble those of Great Britain, but in their organization and methods they are much more nearly akin to those of the United States. The two major parties call themselves the Conservatives and the Liberals; a third party, known as the Progressives, has a handful of members in the House. The Conservatives are now in power. But as in England the names of the political parties give no real clue to

Quebec is permanently fixed at 65; the other provinces are entitled to such quotas as their respective populations warrant according to the Quebec ratio. Nova Scotia, for example, with about one-quarter of the population of Quebec, has 16 members.

their respective attitudes on matters of public policy. The differences between them, such as they are, do not relate to the fundamentals. The constitution of Canada ignored the existence of political parties and the laws for the most part continue to treat them as wholly outside the mechanics of government. But their influence on the course of public policy is as great as in England or the United States.

Canada is a federation of provinces, of which there are now nine in all.¹ Each of these nine provinces has its own provincial government consisting of a titular chief executive who is called lieutenant-governor, a provincial prime minister and cabinet, and a provincial legislature. The lieutenant-governor is appointed for a five-year term by the governor-general on the advice of the federal cabinet. The position of lieutenant-governor carries no personal authority inasmuch as all official acts are performed in accordance with the advice of the provincial cabinet which, in turn, is responsible to the legislature. The legislature, which consists in seven provinces of a single chamber, is elected by universal suffrage.² Party lines are substantially the same in provincial as in federal politics.

The provinces.

AUSTRALIA

In point of population, Australia comes next among the self-governing dominions. The island became a British possession by discovery and settlement early in the nineteenth century. It was at first deemed to be of little value and was used as a penal colony. In time, however, colonies of free settlers and of liberated prisoners were established in different parts of Australia and these colonies were given a system of partial self-government which eventually widened into complete autonomy. There were six of these colonies and various attempts were made during the last half of the nineteenth century to unite them into a federation but the project did not succeed until 1900, when the Commonwealth of Australia was established by action of the British parliament at the request of the colonial governments. The constitution of the commonwealth was ratified by the people and it cannot now be changed except by the assent of a majority of the voters in a majority of the states.

Early history of Australia.

¹ Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, and British Columbia.

² In Quebec and in Nova Scotia there are two chambers—a legislative council and a legislative assembly, both elective.

General
structure of
its govern-
ment.

In general the government of the Australian commonwealth somewhat resembles that of Canada although there are some important differences. A governor-general and a federal cabinet form the executive branch of the government. The governor-general is appointed by the British crown on the nomination to the Australian cabinet. There is a parliament of two chambers called the Senate and the House of Representatives. But the Australian Senate, like that of the United States, is based upon the principle of state equality. It consists of thirty-six senators—six from each state irrespective of population. And the senators are elected, as in America, by state-wide popular vote. The Australian House of Representatives also follows the American model in that it is comprised of members elected from districts which are approximately equal in population, one from each. Universal suffrage has been established throughout the commonwealth. Each of the six Australian states also has its own government, which, in a general way, is similar to that of a Canadian province. But in apportioning powers between the federal and provincial governments the Australian constitution reserves to the states all powers not definitely given to the central government.¹

SOUTH AFRICA

The Union
of South
Africa.

The Union of South Africa consists of four provinces (Cape Colony, Natal, the Transvaal, and the Orange Free State) which were united in 1910. This union differs from the federations of Canada and Australia in that it does not rest upon an enumerated division of powers between federal and provincial authorities. The South African constitution gives virtually full and complete authority to the Union parliament. But it reserves some jurisdiction to the provinces and also provides that the Union parliament may delegate to the four provincial governments such powers as it sees fit. In any event all laws enacted by the provincial governments must have the approval of the Union authorities before they become valid. The South African Union, therefore, is a federation in form only. It is the sort of federation that Alexander Hamilton would probably have established in America if he had been given his way in 1787.

The South African government consists of a governor-general, a

¹ The best concise description of Australian government is that given in Lord Bryce's *Modern Democracies* (2 vols., New York, 1921), Vol. II, pp. 166-264.

cabinet, and a bicameral legislature. The Senate is made up of forty members, eight chosen by the legislative council of each province and eight appointed by the governor-general on the advice of his cabinet—all for ten-year terms.¹ The lower chamber, or House of Assembly, is made up of members elected from single districts. Each of the four provinces is governed by an administrator who is appointed by the governor-general, and an elective legislative council.

OTHER OVERSEAS POSSESSIONS

It would take a whole volume to describe the government of those British territories which have a large amount of self-government but not a full measure of it. Southern Rhodesia, for example, enjoys virtually full autonomy except for certain restrictions placed upon its government in the interest of the native population. Malta has full self-government except as regards certain reserved matters such as defense, coinage, external trade, and immigration. In Jamaica the elective representatives of the people control the legislative branch of the government but do not control the executive. The status of Jamaica is thus, somewhat roughly, like that of the Philippines. British Honduras, another colony in the Western hemisphere, has a legislative council in which the representatives of the people do not constitute a majority, and St. Helena (famed as the last home of Napoleon) has no such council at all. From Canada to St. Helena, therefore, the various territories run the whole gamut of colonial government, with all degrees of self-determination and democratic control. But whatever the measure of home rule, or the lack of it, British suzerainty has always aimed at the protection of the native races, the abolition of slavery, the reign of law, the maintenance of order, and the training of the people in the art of government.

The partly
self-govern-
ing colonies.

Britain has many protectorates and in such territories there is sometimes a great gulf between political theory and the facts. Ostensibly a protectorate is not subject to control as regards its own internal affairs; it is controlled only as respects its foreign relations. But the fact is that internal affairs and foreign affairs cannot always be sharply differentiated, and the protecting country always gives itself the benefit of any doubt in the matter. Its minister resident, or resident general, or whatever he may be called,

The protec-
torates.

¹ It may be of interest to mention that four of the appointive senators have been named to represent the colored population.

acquires the habit of tendering advice to the native rulers on all manner of problems, both internal and external. He becomes, to all intents, the directing factor in the government of the protectorate. The status of a protectorate is not usually permanent; often it is merely a prelude to annexation, but it has sometimes ripened into independence.

Spheres of
influence.

Protectorates should not be confounded with spheres of influence. A sphere of influence is a backward area in which the interest of some civilized state has become recognized as paramount. When two European countries find themselves engaged in rivalry for the exploitation of some undeveloped territory, and drifting into open rupture because of this rivalry, they try to reach an agreement dividing the territory into spheres so that each of the exploiters may keep from interfering with the other. Prior to the world war, for example, Great Britain and Russia agreed to delimit spheres of influence in Persia. As respects countries which are not immediately concerned, these agreements have no binding force. They depend for their validity upon the power of the countries which acquire the spheres of influence. Nor do such agreements establish any rights of sovereignty, although the dominant country sometimes imposes a directing hand on the political affairs of the territory in question.

Mandated
territories.

Mandated territories offer a new complication to the student of colonial government. At the close of the world war there arose the question as to what disposal should be made of the former German colonies and of certain territories belonging to the old Turkish empire. At the end of previous great wars such territories had generally been divided among the victors. In 1919, however, it was felt desirable to try some new plan which would be more in keeping with the high principles of altruism which the victorious Allies professed. So it was agreed in the Treaty of Versailles that the territories wrested from Germany and Turkey should be handed over to the League of Nations on the understanding that each should be administered, on behalf of the League, by one of its member-countries. Mandates for the government of the various territories were thus awarded to the victorious countries, to Great Britain and France particularly. The United States was offered a mandate for Armenia but declined it. The mandatory, or country holding the mandate, is in the position of a trustee for the League of Nations, to which it reports periodically. The future of these

mandated territories is obviously bound up, therefore, with the continuance of the League.¹

In principle the British parliament has supreme and unfettered power over all British territories, no matter what their status. It is not permanently bound by the provisions of constitutions which it has granted to Canada, Australia, and other dominions. As a matter of constitutional theory the British parliament has the right to repeal any of them at its discretion. As a matter of fact, on the other hand, it would not venture either to repeal or amend the organic law of any self-governing dominion save on request from the government of that dominion itself.² So here we have, once more, an illustration of the wide divergence which exists between the law and the usages of British government. Parliament retains the fiction of complete supremacy, but in the case of the dominions has surrendered the entire substance of it.

The supremacy of parliament.

In all the British dominions and colonies it is provided that the governor-general, or the governor, may withhold his assent to any measure until the pleasure of the crown can be made known. This means that he may exercise a temporary veto until the measure has been laid before the British cabinet. And even if the governor gives his assent, a dominion or colonial law may subsequently be disallowed by the London authorities. In some of the colonies this prerogative of withholding assent, or disallowing laws after they have received the assent of the colonial governor, has been freely exercised; but in the self-governing dominions it has been virtually abandoned. A distinction should be made, of course, between the vetoing of colonial laws and the work of the judicial committee in invalidating them as unconstitutional.³

The veto of laws.

¹ Palestine is held under a mandate granted by the League of Nations. This mandate imposes upon Great Britain the duty of making such political and administrative arrangements as will assure the establishment of a Jewish national home, the development of self-governing institutions, including local self-government, and the protection of all civil and religious liberties. Under this mandate Great Britain has appointed a high commissioner for Palestine. He is assisted by an appointive council. There is also a legislative council, in which a majority of the members are indirectly elected by the people.

Mesopotamia (Iraq) was also placed under a League mandate to Britain, but the people of the former country made strenuous objection to this arrangement. Hence an alliance was concluded between the two governments. Under the terms of this agreement Great Britain is to render advice and assistance without impairing the independence of Mesopotamia. This agreement has been accepted by the League of Nations in lieu of the earlier provision.

² All the self-governing dominions, except Canada, have power to amend their own constitutions.

³ See *above*, pp. 281-283.

The channels of imperial co-ordination.

The London government deals with the overseas British territories through three ministerial offices. The secretary of state for India is the main channel of communication for that empire, including the protected states. The secretary of state for dominion affairs has immediate charge of relations with the self-governing dominions, including the Irish Free State. The secretary of state for the colonies takes care of all the rest, including the protectorates, the mandated territories, and the condominiums. All three secretaries of state are members of the British cabinet. As heads of their respective departments they go out of office whenever a new cabinet comes in but their subordinate officials are permanent. Hence a change in ministry does not involve any appreciable shift in colonial policy because the broad outlines of imperial connection are accepted by the nation as a whole and are not, in the main, a theme of party controversy.

The representation of the dominions in London.

The self-governing dominions maintain in London officials who are known as high commissioners, and some of the provinces or states maintain agents-general there also. These officials, who are appointed and paid by their respective governments, have functions which are chiefly of a commercial character; but they are also utilized by their own governments in dealing with the imperial authorities. Their functions are steadily becoming more diplomatic in character. Some of the dominions also maintain agents in other countries. These agents virtually serve as ministers or consuls, although they are not members of the British diplomatic or consular service.

The matter of treaties.

This raises the question whether a treaty can be made between one of the self-governing dominions and a foreign state. Is Canada, for example, an independent country to that extent? The answer is that although the treaty-making power is ordinarily exercised through the British government, there is nothing to prevent the making of treaties by the dominions, and at least one important treaty has been concluded between Canada and the United States without the intervention of any British official.

English sentiment in relation to the empire.

During the early Victorian period, about the middle of the nineteenth century, there was a widespread feeling in Great Britain (especially among the Whigs and Liberals) that distant colonies like Canada, Australia, and South Africa were of dubious value to the mother country. They claimed the protection of the British army and navy; they drew the home government into their quar-

rels; they desired all the advantages but would give nothing in return. They were like "ripe fruit," as Turgot once said, that would fall from the parent tree whenever they had grown to maturity. It was taken for granted by many Englishmen that the bestowal of full self-government would be merely a stepping-stone to complete independence. During the era of Disraeli's leadership, however, this pessimism began to disappear and Englishmen commenced to think in terms of imperialism.

It was an idea that appealed strongly to the jingo-minded, this vision of the meteor flag of England flying over territories on every continent and afloat on every sea. In time the new ardor brought forth a school of imperialistic writers,—writers of history like Sir John Seeley, and writers of poetry like Rudyard Kipling. They wrote and sang about the romance of England's expansion, her dominion over palm and pine, her far-flung battle line, and her shouldering of the white man's burden. Public sentiment was tuned up to a new interest in the colonies and projects of imperial federation began to be much discussed.

The late Victorian era.

In 1887, on the occasion of Queen Victoria's jubilee, representatives of all the dominions and colonies were summoned to London and in an atmosphere of festivity a series of conferences between these representatives and the home government were held. The project of an all-empire council or parliament was cautiously broached but nothing came of it. Ten years later, at the Diamond Jubilee of 1897 there was another conference, and more discussions; likewise with no tangible results. Far-called, the navies melted away; the captains and the kings departed; the colonial prime ministers sailed for home; and the dream of an imperial federation remained a dream. It was suggested, however, that such conferences should be called from time to time to discuss problems of imperial interest.

The project of imperial federation.

This suggestion was adopted and the imperial conference has now become an established institution. It ordinarily meets every four years, but may be specially summoned at any time. It has a permanent secretariat in London. At these conferences the prime minister of Great Britain presides. The other members are the secretaries of state for the dominions, for the colonies, and for India, the president (prime minister) and one or more ministers from the Irish Free State, the prime minister and one or more other representatives from Canada, Australia, South Africa, New-

The imperial conferences.

foundland, New Zealand, and Southern Rhodesia, together with certain representatives from India—making more than twenty members in all. The imperial conference has no constitutional powers; its function is merely to deliberate upon matters affecting Great Britain as a whole and to secure informal agreements as to common action. It cannot bind any government. But its importance has grown steadily; its resolutions are of great significance to the dominions concerned, and it may now be looked upon as an important factor in imperial administration.

The imperial war cabinet.

An interesting, although transient, step in the direction of welding the British commonwealth together was taken during the world war. At the inception of this conflict, it will be remembered, all the British dominions hastened to offer assistance and contribute their quotas of troops to the Allied cause. Canada, before the war was over, was maintaining an entire army corps on the Western front. Australia, New Zealand, and South Africa also contributed large forces. It was deemed advisable, therefore, that the dominions should be given some share in the direction of British war policy and in 1916 the war cabinet summoned the various prime ministers (together with two native representatives from India) to join in its discussion of war problems. The sessions of the war cabinet, as thus enlarged, were known as sessions of the *imperial* war cabinet. Sessions continued during 1918 and until after the armistice when the members betook themselves to Paris to represent their various governments at the peace conference. Meanwhile it was suggested that after peace had become firmly established, some permanent arrangement ought to be devised whereby the dominions and India would be given the right of "continuous consultation in all important matters of common imperial concern." But there were practical difficulties in the way and in the absence of any urgent need for continuous consultation no such plan has been carried into effect.

The British dominions and the League of Nations.

At the Paris peace conference of 1919 Canada, Australia, New Zealand, and South Africa were represented by their own delegations. The covenant of the League of Nations provided, moreover, that the dominions should be admitted as regular members of the League, with the right to maintain separate representatives in the League's assembly. This arrangement, which gave Greater Britain six votes in the assembly of the League (or seven votes since the admission of the Irish Free State) was strongly criticised in the

United States, but the various dominions insisted upon it as a mark of their self-governing status and they have been represented in the League assembly since its establishment.

The American objections to this provision were based upon the assumption that the votes of the British dominions in the League assembly would be controlled by the mother country. But there was not much warrant for this assumption. If the vote of Ireland is regularly cast with that of England it will assuredly betoken a new world order. The interest (and the votes) of Canada and Newfoundland in any matter affecting the Western hemisphere would certainly not be lined up against their nearest neighbor. Nor is it half as certain that India and South Africa would vote with England as it is that Panama and Cuba would be with the United States in League voting. It is true that the British commonwealth has seven votes in the League of Nations assembly, but to say that Great Britain "controls" all these votes is to use the word in a very expansive sense. The dominions control their own votes.

Has Britain
seven votes
in the
League
assembly?

The possibility of establishing preferential tariffs throughout the empire has had much discussion during the past thirty years. Each British dominion makes its own tariff and these tariffs lay duties on imports from Great Britain as from other countries. Canada, however, gives British imports a preferential rate, the reduction from the regular customs duties amounting to about one-third. Australia, New Zealand, and South Africa also have varying differentials in favor of imports from Great Britain. These dominions, of course, are desirous that the principle should work both ways, in other words that Great Britain should give imports from the dominions a tariff preference also. But Great Britain has no regular tariff and her people rejected in 1923 the proposal to establish one. Whether the one-sided arrangement will permanently continue if the mother country clings to the policy of free trade is a question that no wise man ventures to answer.

Tariffs
within the
empire.

Students of colonial government have been fond of comparing the Roman empire with the British, for there are some interesting resemblances between the two, and some sharp contrasts also. The British empire is vastly more extensive than the Roman ever was, and the bonds which hold its component parts together are wholly different. Rome dominated her provinces by force and fear.

Greater
Rome and
Greater
Britain.

Hence, when the Roman military power waned the empire of the Cæsars went to pieces. The British commonwealth does not rest on military force. It is held together by considerations of allegiance and sentiment, by ideals and mutual advantage. From the dominions and the colonies Great Britain derives (not tribute, as Rome did) but economic advantages, more particularly a great market for her manufactures, cargoes for her ships, opportunities for her people, a place in the sun for her emigrants. Trade follows the flag. Emigration, to some extent, does likewise. The dominions, on the other hand, derive some important political benefits. Each is saved the expense of maintaining expensive military and naval armaments. And so long as these dominions have full and free control of their own affairs, what have they to gain by cutting adrift?

The ties
that hold
the empire.

"A king of shreds and patches," quoth Shakespeare, although he did not have George V in mind. His red patches on the world map, big and little, are held together by two outstanding bonds,—common allegiance and common ideals. These ties may be light as air but they are strong as links of iron. Every square mile of territory, whether it be free state or dominion, colony or condominium, is under the suzerainty of the British crown. Its officials take an oath of allegiance to the king. The king is king in Ireland, in New Zealand, in Hongkong. The monarchy, therefore, is the visible symbol of unity throughout this vast dispersion which Britons call their imperial commonwealth. And a token of unity is needed, for it is amazing how few men on this earth have minds which can really grasp a political conception such as sovereignty, the commonwealth, or imperial federation. "Nay, but we will have a king over us," said the Israelites to Samuel. They wanted someone with the attribute of majesty who would prefigure the unity of the Jewish race.

The community of political ideals is also a tie that binds the British commonwealth of nations together, although it does not manifest itself in any symbolic form. Everywhere there is a consciousness of these common ideals and a conviction that they can only be preserved by holding together.

Grave mother of majestic works
From her isle-altar gazing down,
Who, god-like, grasps the triple forks
And, king-like, wears the crown.

It is an adventure full of fascination, this attempt to reconcile democracy and self-government with the need for common action in matters affecting the whole. "I have remarked again and again," said Pericles, "that democracy cannot govern an empire." It may be true. The outcome of the British attempt to do it cannot yet be predicted. History affords us no clue to prophecy, for the world has never seen a commonwealth like this one.

The growth of the British commonwealth is exhaustively covered in *The Cambridge History of the British Empire*, in eight volumes, each with an elaborate bibliography. For a general survey of British colonial expansion the reader may be referred to J. A. Williamson, *A Short History of British Expansion* (2 vols., London, 1930) and to H. E. Egerton, *Short History of British Colonial Policy* (New York, 1898). This volume is supplemented by the same author's *British Colonial Policy in the Twentieth Century* (London, 1922). Mention should also be made of Sir John Seeley's *Expansion of England* (London, 1895). A. Berriedale Keith's *Responsible Government in the Dominions* (2nd edition, 2 vols., Oxford, 1929) gives a full presentation of the subject as do two other volumes by the same author, namely, *The Constitution, Administration and Laws of the Empire* (New York, 1924) and *The Sovereignty of the British Dominions* (London, 1929). *The Oxford Survey of the British Empire*, by A. J. Herbertson and O. J. Howard (6 vols., Oxford, 1914) contains a great deal of detailed information.

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of the Commonwealth (London, 1916); A. Zimmern, *The Third British Empire* (London, 1927); H. Duncan Hall, *The British Commonwealth of Nations* (London, 1920); Manfred Nation, *Empire Government* (London, 1928); L. H. Guest, *The New British Empire* (London, 1929); P. N. Baker, *The Status of British Dominions* (London, 1929); Richard Jebb, *The Empire in Eclipse* (London, 1926); C. M. McInnes, *The British Empire and its Unsolved Problems* (London, 1925); W. M. Hughes, *The Splendid Adventure* (London, 1929); N. W. Rowell, *The British Empire and World Peace* (Toronto, 1922); and E. Porritt, *The Fiscal and Diplomatic Freedom of the British Dominions* (Oxford, 1923).

For statistical data relating to all portions of the British empire the most convenient book of reference is the *Statesman's Year Book*, published annually.

CHAPTER XX

A SURVEY OF FRENCH CONSTITUTIONAL HISTORY

It is the experience of the ages that every man who attains power is prone to abuse it. He goes forward until he finds his limits. If power is not to be abused then it is necessary, in the nature of things, that power be made a check to power.—*Montesquieu*.

To understand the government of any country it is not enough to study the bones which make up the skeleton of its institutions. A government is not an affair of bones alone, but of flesh and blood, muscles and nerves, mind and soul. So the student of government must not be an anatomist only, but a physiologist and a psychologist as well. He must remember that government is an organism which owes something to heredity and something to environment. To understand the genius of a government, therefore, he must not only know its present structure but its history, its temperament, and the atmosphere in which it functions. There has been too much study of government as a motionless thing, a valley of fossils, of stereotyped institutions. Every government is a going concern, a living organism which carries something from the past into the present, and something from the present into the future. Howsoever men may disagree about biological evolution, there is no question that all political institutions have evolved and are evolving.

French history and French government.

France is a republic, a relatively young republic, fifty-five years of age. But the present political institutions of republican France, many of them, are much older than this. They are derived, in whole or in part, from the various despotisms, empires, monarchies, and republics that have had their day in France during the past five hundred years. It is often said that France is a country with the forms of a republic, the institutions of a monarchy, and the spirit of an empire. The French Republic, in other words, is a republic with a past. Its visage is well indented by hangovers from the hectic days of Bourbons and Bonapartes.

A republic with a past.

Ask an Englishman when the middle ages came to an end and he will give you the year 1500 as an approximate date. He calls Cromwell a modern statesman, Shakespeare a modern dramatist,

France began her modern history with the revolution.

and Milton a modern poet. He is right—so far as his own country is concerned. England entered the modern era about the time that America was discovered. But if you ask a Frenchman he will tell you that the middle ages did not come to an end until 1789, inasmuch as feudalism, despotism, and the other institutions of mediævalism were not ousted from France until that date. To him the Revolution of 1789 is the most epoch-marking event in the history of the world. "It came like the law on Sinai," wrote Sainte Beuve, "amid thunder and lightning . . . and the foreigner loved it as much as we did." So, when the Frenchman speaks of modern France he means post-revolutionary France. Colbert and Cromwell were contemporaries, but no Frenchman looks upon Colbert as a modern statesman, or upon Molière as a modern dramatist for that matter, although both were born after Shakespeare died. Modern France is very modern.

Characteristics of the old régime:
1. No liberty.

It is not surprising that this should be so, for the Great Revolution shook France as nothing else has ever done. English history contains nothing like it. There have been revolutions in England, but never a revolution like this. France, prior to 1789, was a despotism. All political authority centered in an absolute monarch. There was no constitution, no parliament, no ministry responsible to the people. Once upon a time France had possessed the makings of a parliament, an assembly of three "estates"—one representing the clergy, another the nobility, and the third the common people. But the Estates-General met only when the king chose to issue his summons, and as time went on the intervals between meetings became steadily greater. During the long period intervening between 1614 and 1789 no meetings were called at all. So the Estates-General, unlike the English parliament, never developed into a check upon the royal prerogative. The king made the laws and the ordinances; he also enforced them, and punished violations on his own authority. The classic boast imputed to Louis XIV—"L'état c'est moi"—embodied no mere fiction of royal power. The king and the state were one. He was legislature, executive, and judiciary combined; the people had no share in their national government.

Or self-government.

Nor did the people of France, in pre-revolutionary days, control their own local government. They had no elective councils in province or town or parish. Everywhere the officials of the king were in evidence—intendants, subdelegates, procureurs-du-roi,

grand voyers, bailiffs, and tax-gatherers. In the king's name they ruled city and country alike, responsible to no one but the monarch himself. They owed their offices to appointment and not to election. Securities for the rights of individuals were altogether lacking. There was no freedom of worship, or of speech, or of petition. There was no writ of habeas corpus, no system of trial by jury. There were none of the modern safeguards for the freedom of the common man. By a *lettre de cachet* anyone might be arrested, thrown into jail, and kept in jail, without specific accusation, for any length of time. In a word there was no liberty.

Nor was this all. The country was honeycombed with special privileges of every sort. The clergy paid no taxes although the church possessed enormous wealth. It was said to own one-seventh of all the land in France. The nobility paid only nominal sums in taxation. The entire burden fell upon the bourgeois and peasant classes. This burden was very heavy, for the royal government spent money in prodigious sums. To make things worse the privilege of collecting the taxes was farmed out to profiteers who bid high sums for it and then had to recoup themselves by mercilessly squeezing the people. The higher positions in the government service, as well as in the army and the navy, were reserved for members of the noblesse. Many public offices, including judgeships, were literally sold at auction and when purchased became hereditary. This meant that only the rich could aspire to positions of honor or emolument in the service of the state. In a word, there was no equality.

2. No equality.

Finally, the nation possessed no national solidarity. The kingdom had been built up out of provinces, and the old provincial sentiment remained strong. People continued to think of themselves as Burgundians, or Normans, or Bretons rather than as Frenchmen. There was no system of common law, common throughout the land, as in England. Each province, each part of a province, had its own *coûtume* or body of customary law, and no two of these *coûtumes* were alike. As between town and rural district there was little intercourse and no fraternal feeling. The townsman despised the peasant; the peasant hated him in return. Trade between town and country was throttled by the octroi or municipal tariff which levied duties at the town gates on all merchandise passing from one place to another. Goods going from Havre to Paris paid duties at ten points on the way. Even within

3. No fraternity.

the towns the old gilds or close corporations of artisans continued to control industry and to foster all sorts of class animosity. Thus the various parts of the country and the various elements among the masses of the people were kept at arm's length from each other. In a word there was no fraternity.

The Revolution of 1789.

Liberty, Equality, Fraternity thus became the watchwords of the surging tide which overwhelmed the old régime in 1789. The Revolution began in Paris. On July 14, 1789, the mobs stormed the grim structure known as the Bastille and turned the prisoners loose. The insurrection spread with the same rapidity that we have seen in Russia during our own day. Within a few weeks the old order had been levelled to the ground everywhere. A revolutionary government was thereupon set up and a constituent assembly proceeded to clear away the débris. The king and queen were sent to the guillotine; the institution of nobility was abolished, the Church was disestablished and its land confiscated; all special privileges and immunities were declared at an end; the Gregorian calendar was displaced by a new system of months and years; the towns were given complete home rule; the country was deluged with paper money (assignats), and the guillotine was kept working overtime.

The various revolutionary constitutions (1789-1795).

Meanwhile, as the ground was being cleared, the work of rebuilding began. The revolution produced a series of constitutions. The first was a Declaration of the Rights of Man, promulgated by the assembly in 1789. It was supplemented by various decrees which endeavored to carry the principles of the declaration into effect. Then, in 1791, came a more elaborate constitution providing for a responsible ministry and a single legislative chamber chosen for two years from men of property by indirect election. Although the Declaration of 1789 had asserted that "men are born with equal rights and remain so," the suffrage was now limited to those who paid a certain sum in taxes. But this constitution did not go far enough for such radicals as Danton and Robespierre who wanted a real democracy of the proletariat. So it was replaced in 1793 by a new and much more striking document which formally set up the First French Republic with a single chamber and an executive committee. This constitution was submitted to the people and ratified by them, but was never put into effect. Robespierre became the virtual dictator of France and inaugurated the Red Terror, but he soon fell from power and the moderates gained

control. Thereupon a new constitution was drafted, submitted to the people, and ratified by them in 1795.

This constitution of the Year III (1795) provided for a legislature of two chambers, chosen by voters with property qualifications. It established a plural executive, or directory as it was called, composed of five members, chosen by the legislature. Strong men were placed upon this directory and the country began to recover from its revolutionary chaos. The events of 1795 marked the turn of the tide. From revolution and radicalism the pendulum now began its swing to conservation and centralization.

The Directory (1795-1799).

The government of the directory continued to function for four years, but it never had a fair chance because France was hard pressed by foreign enemies during the whole of this period. In 1799 it was replaced by a consulate with Citizen Bonaparte installed as First Consul. The young Corsican had risen rapidly through a series of military victories and by a coup d'état took the reins of power into his own hand. Bonaparte was not an enthusiast for democratic government. He did not believe in popular constitutions. It was his idea that a constitution ought to be brief, general, obscure in its provisions, and easy to change. Hence, in 1800, the constitution of the directory was supplanted by a new one in which the powers of the legislative body were reduced to a shadow and those of the executive greatly increased.

The Consulate (1799-1804).

The Man of Destiny was now master of France. In 1802 he had himself proclaimed first consul for life and two years later (after submitting the question to a vote of the people), he became emperor. Thus, within the space of fifteen years, France had run the whole cycle of despotism, chaos, republic, and empire. Both as consul and as emperor Napoleon found it necessary to do a lot of reorganizing. At every step he centralized power in his own hands until he had more of it than any of the old Bourbon kings ever possessed. He placed his own prefects at the head of the territorial departments into which France had been divided by the revolutionary government, and these prefects became the tentacles of the imperial octopus. The whole system of local government was welded into a perfect pyramid. By his Concordat with Papacy, Napoleon restored the Church to something like its old status. He could not give back its lands, for these had been divided, and had passed into the hands of many small owners; but it was understood that the Church would be supported out of the public funds.

The First Empire (1804-1815).

Napoleon's work.

"How can you have order in a state," he said, "without religion?" Believing also in social distinctions he revived the institution of nobility and founded the Legion of Honor. But the most striking among Napoleon's non-military achievements was the compilation of a series of law codes and the systematization of legal procedure throughout the country. These codes have remained in operation, without radical change, to the present day.

His rank as
a statesman.

Many other things were accomplished, by way of reconstruction, during the Napoleonic era. Unhappily the dramatic character of Bonaparte's military operations have served to dull the world's appreciation of him as a civil leader. Most Americans think of the first Napoleon as a war lord of vaunting ambitions and intermittent genius who lost the battle of Waterloo; but he was in fact the most far-visioned and constructive statesman of modern times. He was a man of marvelous political imagination and great organizing power. Courage and force were his immortalizing qualities. He was never afraid of a thing because it was new, nor was he disdainful of any thing because it was old. France owes more to Napoleon's pen than to Napoleon's sword. The results of his statesmanship are still redounding to the benefit of his people while the fruits of his military victories have long since been bartered away.

The Napo-
leonic
legend.

The Napoleonic legend still survives, moreover, and is an invisible factor in the politics of France. From time to time, when the country gets discouraged or depressed, Frenchmen are roused and thrilled by recollection of the days when the Corsican eagle flew across the Mediterranean to Egypt and over the snows to Moscow. They think of Marengo and Wagram, of Jena and Austerlitz. The memory of these great days is more than a memory to France. It is an eternal stimulus to the national pride. But, after all, these Napoleonic crusades achieved nothing. They merely salted the deserts and steppes with the bones of Frenchmen. Legends pay little heed to profit and loss.

The Bour-
bon Resto-
ration
(1815-1830).

The First Empire came to an end in 1814-1815 by reason of its military collapse. Napoleon was packed off to St. Helena where he grumbled his way to illness and death. Meanwhile the old Bourbon dynasty was restored to power in France. The new king, a younger brother of Louis XVI who was guillotined during the Revolution, professed himself ready to be the head of a constitutional monarchy patterned after that of England. So an elaborate

written constitution was prepared and put into operation. This charter attempted to reproduce the unwritten constitution of Great Britain; hence it contained provision for a House of Peers, an elective House of Commons, and a ministry. It was assumed that the ministers, as in England, would hold themselves responsible to the elective chamber. There was to be trial by jury, freedom of the press, writs of habeas corpus, and all the traditional English securities for personal liberty.

But Frenchmen soon discovered that it is far easier to transplant the forms than the essence of a government. British institutions would not take root in foreign soil, even though the new environment was only thirty miles away. It has often been said of the Bourbons that they could "learn nothing, and forget nothing." At any rate Louis XVIII never caught the spirit of the constitution which he swore to uphold. Neither did his brother, Charles X, who succeeded him in 1824. The new king tried to maintain in office a ministry which did not have the confidence of the elective chamber, and thereby brought about a parliamentary deadlock. To break this deadlock he tried to set aside the provisions of the constitution, and by so doing precipitated the "July Revolution" of 1830. This resulted in the king's abdication and France once more faced the problem of providing herself with a new government. The time was not ripe for a restoration of the republic, and anyhow most Frenchmen believed that the monarch, not the monarchy, had been at fault.

Why it failed.

So they kept the monarchy and changed the line of kings. Louis Philippe, of the House of Orleans, was put on the throne with the understanding that he would be a strictly constitutional ruler. But the parliamentary bickerings continued and no ministry was able to stay in power for any length of time. Owing to the multiplicity of political parties in France the English system of ministerial responsibility would not function. Frenchmen grew tired of a government conducted by bourgeois politicians who spent their time in ceaseless squabbles. The old glories seemed to have departed; the country was sinking to the status of a second-rate power. "*La France s'ennuyait*," as Lamartine said, and the sentiment in favor of a republic grew apace. Had France been England her parliament would have solved the problem by a Great Reform Act, but neither Louis Philippe nor his parliamentary advisers could take a large view of the situation. They let matters drift

The Orleans Monarchy (1830-1848).

from bad to worse until, in 1848, Paris once more flamed into revolution. The king quickly relinquished his throne and the Second Republic was inaugurated.

The Second Republic (1848-1852).

The constitution of the Second Republic, framed by a convention of delegates in American fashion, provided for a scheme of government that was simplicity itself. France was now to have a president directly elected for a four-year term by manhood suffrage. The ministers were to be named by the president. And there was to be an elective parliament with a single chamber. No more would France try to pattern her political institutions after those of England. The example of the United States seemed better worth following in a general way. A simple constitution and direct democracy would provide a cure for the nation's troubles. And a strong president would regain for France a place of leadership among the powers of Europe.

The problem of finding a president.

But where would France find a strong man, a man on horseback, to be president of this Second Republic? Right here the new constitution ran full tilt into its first great problem because there was no outstanding popular idol in sight. France in 1848 had some statesmen who were old and discredited, and some who were young and unknown; but she had no one whose qualities marked him as the man for the hour. But there was one ambitious fellow who saw in this situation a rare opportunity. Louis Napoleon, a nephew of the great Corsican, had been living in England, an exile. As head of the family and heir to the Bonapartist tradition he quickly seized the occasion, crossed to France and got himself elected a member of the assembly. Then he announced his candidacy for the presidential office. He had no visible qualifications for the post except the heritage of a great name. But the Napoleonic legend and his lavish promises were enough. The country rallied to this soldier of fortune and he was elected by an overwhelming majority.

Louis Napoleon and the coup d'état of 1851.

As might have been expected, the election of a Bonaparte to the presidency was a prelude to the end of the new republic. Louis Napoleon had un-republican ambitions. His heart was set on becoming emperor. "With the name I bear," he said, "I must either be on a throne or in a prison." Although elected president for only four years, and constitutionally ineligible for reelection, he had no intention of ever quitting his post of power. Accordingly, as his term drew to a close, he decided upon a characteristically Bona-

partist stroke. Having secured the support of the army he moved large bodies or troops to Paris and arrested all the political leaders who were known to be opposed to him. Then, on the morning of December 2, 1851, the people of the city awoke to find the billboards placarded with proclamations announcing that the president's term had been extended to ten years. There was a slight show of popular opposition, but it was unorganized and speedily repressed. Less than a year later the president submitted to the people of France the question whether he should become emperor. This plebiscite was so adroitly manipulated and controlled that the people gave an affirmative vote and in November, 1852, the Second Republic was transformed into the Second Empire with Napoleon III at its head.¹

Under Napoleon III some important changes were made in the plan of government. The double-chamber system was revived, with a Senate made up of high officials and of senators appointed for life by the emperor. The lower house, or assembly, although ostensibly chosen on a manhood suffrage basis, never proved to be a mirror of public opinion. The elections were controlled in ways which ensured the choice of the "official" candidates. One method was to provide that the ballots were not to be counted when the polls closed, but were to be taken home by the election officer, kept over night, and counted in the morning. In the interval between the closing and the counting most of the election officers did their duty.

The Second
Empire
(1852-
1870).

Anyhow it did not matter much if some opposition crept into the chamber of deputies. The emperor had his ministers, appointed by himself, but they were not responsible to either branch of parliament. The imperial power became as fully centralized under Napoleon III as it had been in the days preceding Waterloo. Napoleon III had none of his uncle's brilliancy either as a statesman or soldier, but he was nobody's fool and he managed to stay on the revived imperial throne for eighteen years.²

The cen-
tralization
of political
power.

The Second Empire lasted from 1852 to 1870. It covered an era of unexampled business prosperity in France, and this prosperity proved to be (as prosperity always does) a great solvent of political

Its early
popularity
and later
decadence.

¹ The title "Napoleon II" was thus posthumously reserved for the young King of Rome, the only son of Napoleon I.

² Mr. H. G. Wells, in his *Outline of History* (Vol. II, p. 438), makes the rather startling assertion that Napoleon III was "a much more supple and intelligent man" than Napoleon I. No historian would agree with any such evaluation.

discontent. During his first eight or ten years the emperor was popular with the Church, with the army, with the business interests, and to some extent with the masses of the people. But after 1860 his star began to wane. The country began to grow restless under the rigorous autocracy of the government. Napoleon III attempted to divert attention from domestic affairs by plunging the country into various diplomatic and military ventures—the Crimean war, the Franco-Italian-Austrian war of 1859, the expedition to Mexico, and a gesture on the Rhine in 1866. These manœuvres succeeded for a time, but the incessant stimulus brought its inevitable reaction. Popular restlessness became so disturbing that various concessions to the principle of ministerial responsibility had ultimately to be made, particularly on the eve of the war with Prussia in 1870. This war, which Napoleon III entered so confidently, brought his own rule to an end.¹ For the emperor, with a large portion of his army, was cornered by the Germans at Sedan and forced to surrender. Napoleon III was subsequently released by his German captors and went to England where he died in 1875.

The collapse of
1870.

When the news of this surrender reached Paris, the capital blew up with indignation. The Empress Eugénie, who had been serving as regent while her husband was at the front, fled to England. A committee of national defense took control of affairs and the Third Republic was proclaimed without any general agreement, however, as to what sort of republic it should be. Many of those who helped to proclaim it were monarchists at heart, while some others, at the opposite extreme, were communists who desired a proletarian dictatorship.

Provisional
government of the
Third Republic.

Meanwhile the committee set up a provisional government. The immediate problem was to solidify resistance to the Germans and to save Paris from capture. As it turned out, however, the military disasters were too great to be retrieved by any eleventh-hour effort. The Germans advanced to Paris, surrounded the city, and forced it to capitulate in the early days of 1871. The surrender was followed by an armistice during which the French people elected a national assembly empowered to pass upon the terms of peace. This body, chosen by manhood suffrage, convened at Bordeaux in February, 1871. Its members were elected for no

¹ The causes of the Franco-German war of 1870 are too complicated for narration here. They are set forth in all the general European histories of the period.

definite term and without limit of powers. Most of them were avowed monarchists who had little interest in republican government and were strongly opposed to radical changes of any sort.

The make-up of this national assembly was a great disappointment to the radical elements, especially in Paris. They showed their resentment by setting up a revolutionary government in the city, thus endeavoring to set Paris free from control by the new national government. A brief but sanguinary civil war resulted and after several weeks of hard fighting around Paris the government of the Commune (as it was called) came to an end. Thus the capital was subjected to a double siege and capture within a single year, first by German and then by French troops. The communist interlude produced a strong reaction throughout France and made certain that the Third Republic, if a republic at all, would be a definitely conservative one.

The Commune—a red interlude.

Having quelled the Commune the national assembly was now able to go ahead. Its first task was to complete the peace negotiations with the Germans and get them out of France. This unpleasant mission was entrusted to Adolphe Thiers, whom the assembly appointed chief executive of France with the proviso that his authority might be revoked at any time. Thiers became, in effect, temporary President of the Republic, while retaining his seat as a member of the assembly. Under his direction the terms of peace were arranged and ratified. The Germans annexed Alsace-Lorraine and imposed a war indemnity of five billion gold francs to be paid by the French government within five years. Portions of France were to remain occupied by German troops until the last installment had been paid. No extension of time was requested by the French, and there were no attempts at evasion. The whole indemnity was raised and paid in gold, or the equivalent of gold, within thirty-six months from the signing of the treaty. This action stands in sharp contrast with Germany's reparation procedure since the close of the world war.

The national assembly and the terms of peace.

The assembly also turned its attention to the task of framing a new constitution, and here some serious difficulties were encountered. With a membership of more than 700 it was too cumbersome a body for constitution-making. A majority of its members, moreover, were monarchists or imperialists at heart, and did not desire a republic as a permanent institution. These anti-republicans were in sufficient numbers to have adopted any sort of monarchical

Framing a new constitution.

The Rivet
Law (1871).

or imperial constitution if they had only been able to agree among themselves. But they were divided—some wanted a Bourbon monarchy, some an Orleans monarchy, and some a restoration of the Bonapartes. This disunion enabled the republicans to keep control of the assembly, and in the late summer of 1871 it passed the Rivet Law, so-called, by which Thiers was definitely continued as President of the Republic with the provision that both he and his ministers should be responsible to the assembly for all their official acts. This action virtually committed the Third Republic to the principle of executive responsibility after the English fashion. Thiers continued to be a member of the assembly and frequently mounted the tribune to advocate his own views, thereby creating a rather anomalous situation—a titular chief executive trying to be prime minister and floor leader as well.

Factional
quarrels
and dead-
lock.

For nearly two years France drifted along under this makeshift arrangement, without a constitution and without any clear decision as to her ultimate form of government. On one occasion the assembly gave consideration to a complete draft of a republican constitution but rejected it by the solid vote of the monarchists who were able to compose their quarrels for the moment. On the other hand these monarchists were helpless when it came to uniting on an alternative constitution. They could agree to destroy but not to construct. Thiers, as a member of the assembly, became involved in these squabbles and in his impatience swung over to the republican side, urging his own views so earnestly that the assembly, in 1873, restricted his right of addressing it. Thereupon he resigned the presidency in a huff. The assembly quickly accepted the resignation and in his place chose Marshal MacMahon for a seven-year term. MacMahon was a soldier who had risen to the highest rank in the army under Napoleon III and his election was everywhere regarded as a clean-cut victory for the anti-republicans.

Thiers and
MacMahon.

The make-
shift consti-
tution
(1875).

After MacMahon's election the assembly discussed various plans for a monarchical or imperialist restoration, but could not agree upon any of them although on one occasion it came very close to doing so.¹ Nor did there seem to be any chance that a republican

¹ In the summer of 1873 a majority was in sight for a plan by which France should again become a limited monarchy with a Bourbon (the Comte de Chambord) on the throne, and an Orleanist (the Comte de Paris) to have the right of succession. Everything was settled except the flag. The Legitimists (Bourbons) held out for the old fleur-de-lis, while the Orleanists insisted upon retaining the tricolor. On this flag question the whole plan foundered.

constitution could secure the support of a majority. In this dilemma the assembly appointed a committee to prepare individual resolutions (*projets*), in the hope that various questions relating to the form of government might be settled one by one. This proved to be a way out of the difficulty and in 1875 the assembly was able to adopt, one by one, a series of three "constitutional laws." Then, having made provision whereby these laws might be easily amended, it went out of existence. These three laws were all that the Third Republic obtained in the way of a constitution from this long-lived assembly. They still form the constitution of France,—if three unjointed laws can be called a constitution.¹

The French constitution of 1875 differs from that of any other nation. It is unlike the constitution of Great Britain because it was drawn and put into force within a single year by an authorized group of constitution-makers. It is unlike the constitution of the United States in that it comprises not one document but three. It is unlike the new German constitution in that it covers only a small part of the governmental structure, not the whole of it. It is a piecemeal, half-hearted, unfinished affair. These constitutional laws of 1875 bear visible evidence of the spirit in which they were drafted. Their provisions are poorly arranged and crudely worded. They are silent on many matters of the highest importance, for example, the rights of the citizens, the organization of the courts, the selection of the ministers, and even the method of constituting the Chamber of Deputies. Taken as a whole they fall short of forming a constitution as most people understand the term.

It is not that Frenchmen were novices in the art of making constitutions. At drafting and adopting constitutions they had, in 1875, more experience than any other European people. Between 1789 and 1875 France had no fewer than seven constitutions, each of which was believed by its framers to be a monument of constructive statesmanship and worthy of a long life. The constitution of 1793, for example, was touted by its framers as a paragon of excellence. It never went into operation. The Charter of 1814 was extolled as a perfect copy of a perfect model. It died of anæmia

Its nature.

How it differs from previous French constitutions.

¹ The Law of February 24, 1875, deals with the Senate; the Law of February 25 relates to the President, the Chamber of Deputies, and the ministry; and the Law of July 16, 1875, explains the relations of the public authorities. The text of these laws may be found in any collection of modern constitutions, for example, in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922).

when it was only sixteen years old. The constitution of 1848 was regarded by the founders of the Second Republic as the last word in governmental simplicity and effectiveness. It perished while still in its swaddling clothes. The constitution of 1852 was heralded as an instrument through which the old-time glories of France would be revived. It brought the country to humiliation and civil war. The constitution of 1875 differed from all its predecessors in that nobody was proud of it, nobody was willing to be its god-father, nobody thought it would live, nobody regarded it as anything but an unworthy compromise. Its framers, for the first time in the entire history of constitution-making, felt under obligation to apologize for the shabbiness of their work.

The sequel
(1875-
1930).

But they builded better than they knew. Their jerry-built trio of constitutional laws has lasted for a longer time than any of the comprehensive and refined constitutions of earlier days—imperial, monarchical, or republican. This constitution weathered the storm and stress of the world war; it has now rounded out more than a half-century and is still going strong. There is every indication that it will serve indefinitely.

Reasons for
the longev-
ity of the
present con-
stitution.

What is the reason for this? It is mainly to be found in the fact that the constitution of 1875, unlike all previous French constitutions, did not embody any system of political philosophy and did not sacrifice practicability to principles, as previous French constitutions had done. Nor did it attempt to make the frame of government hard and fast. Rather it left a great array of things to be determined by statute, ordinance, custom, precedent, and growth—in other words “by time and habit” as Washington once said. It did not wipe the old slate clean and begin anew; on the contrary it retained all the governmental institutions which existed prior to 1875, except in so far as they happened to be irreconcilable with the new order. Nothing was needlessly abolished. There was no violent break with the past. There was no borrowing of institutions from abroad. The constitutional laws of 1875 are Gallic in every line. They fitted the needs of their day; they have proved easy to change and to expand. Hence it has come to pass that the Third Republic, born on the morrow of a great disaster, and speeded on its way by men who did not wish it to live, has grown stronger with the lapse of time. During the past twenty years of war and reconstruction it has shown itself able to bear the heaviest strain that could be put upon any government.

France, in 1875, was tired of changing governments by coups d'état and revolutions. The framers of the constitutional laws were anxious to provide a non-violent way of shifting the basis of the state whenever it should become desirable. So they made the process of amendment simple,—about as simple as it could be made without entirely abolishing the distinction between “constitutional” and “ordinary” laws. The French constitution may be amended at any time by action of the two legislative chambers, the Senate and the Chamber of Deputies. In other words constitutional amendments and ordinary laws are made by the same legislators, but not in the same way.

How
amend-
ments are
made.

Each chamber, when a proposal to amend the constitution is put forward, decides whether it will go into joint session with the other chamber to decide upon the proposal. If both chambers agree to a joint session the senators and deputies repair to the great hall of the palace at Versailles where they meet as a national assembly. Each senator and each deputy has one equal vote, and an absolute majority in joint session is essential. Either chamber, of course, may decline to join with the other in convoking a session of the national assembly, and in this way each chamber has a veto on any constitutional amendment that may be desired by the other. Hence, as a practical matter, all amendments to the constitutional laws require a majority of those present in each of the two chambers sitting separately, as well as an absolute majority of the two chambers sitting together.

The process
in detail.

The constitution of France, accordingly, is much easier to amend than is the constitution of the United States. The distinction between constitutional and ordinary laws is still theoretically maintained by the French, but it is not of much practical importance. It takes a majority in both chambers to pass an ordinary law. The same majority is virtually always sufficient to change any provision in the constitution. In 1884 the national assembly adopted a constitutional provision stipulating that the republican form of government must never be made the subject of an amendment, but this stipulation would be no legal barrier if a future national assembly should decide to do what it forbids. There is no way in which a sovereign body can limit its successors. The process of amendment is easy, but this does not mean that it has been freely used. The flexibility of the constitution obviates the need for frequent changes. It is almost always so when a constitution is couched in general terms.

It is an easy
procedure,
but has sel-
dom been
used.

Only a few
amend-
ments have
been made.

Since 1875, in fact, the constitutional laws have been amended on three occasions only. The first was in 1879 when an amendment substituted Paris for Versailles as the seat of government. Five years later (1884) one of the constitutional laws—the one relating to the organization of the Senate—was completely revised. More specifically it was provided that the law relating to the organization of the Senate should no longer have the status of a constitutional law but should be an “organic” law, which might be changed like any ordinary statute. Another amendment, made at this same time, provided that no member of the Bourbon, Orleanist, or Bonaparte family should be eligible for election to the presidency. A third stipulated that when the Chamber of Deputies is dissolved a new election must be held within two months. In 1926 a provision was added to the constitution establishing a sinking fund for the national debt.

Constitu-
tional, or-
ganic, and
ordinary
laws com-
pared.

One of the terms used in the foregoing paragraph suggests the question: What is an organic law? Wherein does it differ from an ordinary law? There is not much difference other than a sentimental one. An organic law is one which, although open to repeal or amendment by exactly the same process as an ordinary law, is nevertheless regarded as more fundamental than a simple statute. It deals with the framework or mechanism of government. It is, therefore, of more than ordinary importance and has a sort of halo around it. It is not to be changed lightly or without good reason. We have a few statutes in America which roughly correspond to the organic laws of France; the statute of 1886 which establishes the existing rules of succession to the presidency (in case of the death or disability of both President and Vice President) is a good example. Such laws, in France, regulate the method of electing senators and deputies.

Supremacy
of the na-
tional as-
sembly.

Legal sovereignty in France resides with the national assembly, that is, with the two chambers in joint session. When the assembly is convoked there are no limitations upon what it may do. The Senate, being the smaller of the two chambers, and hence liable to be outvoted in a joint session, has always been reluctant to join in a convocation of the assembly until definitely assured as to just what amendments are to be considered. Yet if the national assembly should decide to go beyond the specific amendments that it was convoked to consider, there is nothing to prevent its doing so. For the assembly is the judge of its own powers and no court

can declare its actions unconstitutional. Its decisions do not require the approval of the President, nor are they submitted to the people for ratification.

France, during the nineteenth century, served as the world's chief laboratory for political experimentation. The people tried one form of government after another, one constitution after another—only to find themselves disillusioned. Roughly a dozen constitutions trod on each other's heels during the ninety years from 1785 to 1875. The world looked on and learned. The Anglo-Saxon shook his head and averred that Frenchmen had no political stability or sagacity, that they were too doctrinaire, and too fickle in their political allegiance to give any form of government a fair chance. Englishmen, fifty years ago, liked to tell of a young tourist, interested in the study of government, who went into a Paris bookshop and asked for "a copy of the French constitution." The old bookseller shrugged his shoulders at him and said, "My son, we don't sell periodical literature here. Go to a news stand!"

Experiments have ceased and France has settled down.

There would be no point in that witticism to-day. For fifty-odd years France has lived under one constitution, one form of government. Her people have shown no sign of wavering from the republican cause. The republic, to all appearances, is here to stay.

A good brief account of the period 1789–1871 is given in G. L. Dickinson, *Revolution and Reaction in Modern France* (London, 1892) and in J. S. C. Bridges, *History of France* (Oxford, 1929). For greater detail, reference may be made to E. Lavissee, *Histoire de France* (6 vols., Paris, 1901–1911) and the volumes on the *Histoire de France contemporaine* by the same editor which are now in course of publication. On the interval since 1871 reference may be made to Gabriel Hanotaux, *Contemporary France* (4 vols., New York, 1903–1909); Émile Bourgeois, *Modern France* (2 vols., 1919); C. H. C. Wright, *History of the Third French Republic* (Boston, 1916); J. C. Bracq, *France under the Republic* (New York, 1916); J. Labusquière, *La troisième république, 1871–1900* (Paris, 1909); A. Zévaès, *Histoire de la troisième république* (Paris, 1926), Charles Seignobos, *L'évolution de la troisième république* (Paris, 1921), and Raymond Recouly, *La troisième république* (Paris, 1927). This last-named volume contains bibliographical references at the close of each chapter.

The various constitutions may be found in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France* (2nd edition, New York, 1908), and in Duguit and Monier's *Les constitutions et les*

principales lois politiques de la France depuis 1789 (3rd edition, Paris, 1915). Details relating to the framing of the constitutional laws may be found in A. Bertrand, *Origines de la troisième république* (Paris, 1911); J. Simon, *Le gouvernement de M. Thiers* (Paris, 1898); E. Pierre, *Les lois constitutionnelles de la république Française* (Paris, 1889); and Paul Deschanel, *Gambetta* (Paris, 1919).

General works on contemporary French government are E. M. Sait, *The Government and Politics of France* (New York, 1920); Raymond Poincaré, *How France is Governed* (New York, 1913); and Joseph Barthélemy, *Le gouvernement de la France* (2nd edition, Paris, 1924).

CHAPTER XXI

THE PRESIDENT OF THE REPUBLIC

The old kings of France reigned and governed. The constitutional king . . . reigns but does not govern. The President of the United States governs, but does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern.—*Sir Henry Maine.*

The presidency of the French Republic has been the butt of many epigrams both at home and abroad. Clemenceau, who held the prime minister's post during the closing months of the world war, once declared that there were two things for which he could never find any reason, to-wit, "the prostate gland and the French presidency." And the Abbé Lantaigne, more savage in his characterizations, once dismissed the presidency from his writings as "an office with the sole virtue of impotence." Its incumbent, he said, must neither act nor think; if he does either he stands to lose his throne.

The chief of state.

Yet in spite of all this badinage the fact remains that the President of the Republic is the supreme representative of the executive power in France. He is the chief of state and holds the highest political honor that a great nation can bestow. He sits in the seat of Bourbons and Bonapartes. He is the titular commander-in-chief of the armed forces on land, at sea, and in the air. He is the first citizen of the Republic. It may be quite true that the office does not carry powers commensurate with its dignity, but it is none the less a post which the most eminent statesmen of France have sought and are seeking.

His high position.

The President of the Republic is elected by an absolute majority of the two chambers, sitting together as a national assembly. The idea of having the president elected by popular vote did not find favor with the men who framed the French constitutional laws of 1875. They retained too vivid a recollection of what had happened in 1848, when the people were stampeded into electing a president whose chief ambition was to scuttle the republican form of government and turn France into an empire with himself at its head. It is to be remembered, moreover, that the assembly which adopted

Chosen by the national assembly.

these constitutional laws had already elected two presidents, Thiers and MacMahon.

Term and
reëligibil-
ity.

The presidential term is seven years, and there is no legal barrier to reëlection. Nor is there any popular sentiment against choosing a president to succeed himself. But a reëlection has taken place on one occasion only, although on two other occasions a president would probably have been named for a second term had it not been for his own disinclination to continue in office.¹ Thus the tradition against too long a presidential tenure seems to be ripening in France, as in America, by the aid of voluntary declination.

Method of
election.

The procedure by which the national assembly chooses the president is laid down in the constitutional law of 1875. Briefly it is as follows: At least one month before the expiration of his term the president must summon the two chambers into joint session as a national assembly. If, for any reason he fails to do this, the two chambers are directed to meet of their own accord, fifteen days before the expiration of the presidential term. In case the presidency should become vacant by the death or resignation of the incumbent before the expiry of his seven-year term (as happened on six occasions) the two chambers convene immediately without any formal summons and proceed into joint session as a national assembly.

Place of the
election.

The joint session is held at Versailles in a wing of the great château erected by Louis XIV. This hall of the national assembly was reconstructed in 1875 and the Chamber of Deputies used it for regular sessions until 1879 when the legislative capital was moved to Paris. Since this removal the hall has been out of use except for the infrequent sessions of the national assembly—in-frequent because it meets for two purposes only, to amend the constitution and to elect a president.

The cau-
cuses which
precede the
vote.

The election takes place without nominations, speeches, or discussion. This does not mean, however, that there is no manoeuvring, bargaining, lobbying, and bloc-making in advance of the meeting. There is a great deal of it. Caucuses of the various party groups are held and alliances are made among them. As will be indicated later, there are many political factions in France, but

¹ The list of the presidents, with their terms of office, is as follows: Thiers, 1871-1873; MacMahon, 1873-1879; Grévy, 1879-1886, second term, 1886-1887; Carnot, 1887-1894; Casimir-Périer, 1894-1895; Faure, 1895-1899; Loubet, 1899-1906; Fallières, 1906-1913; Poincaré, 1913-1920; Deschanel, 1920; Millerand, 1920-1924; Doumergue, 1924-1931.

no one of them is of itself strong enough to command a majority in the national assembly. So they combine into blocs and by dickering among themselves try to agree upon their respective candidates. Usually, but not always, the race gets narrowed down to two outstanding candidates, each supported by a bloc of party groups, and the assembly merely makes its choice between these two. There is no popular campaign such as takes place in the United States, no primaries or nominating conventions, and no appeal by candidates to the rank and file of the voters. Were any candidate to make his appeal to the people the national assembly would resent his doing so, just as the Congress of the United States is prone to become ill-tempered when outsiders try to force its hand. The voters in France have no share in the election of the chief executive except in so far as they may, by the influence of public opinion, bring pressure to bear on the action of their senators and deputies.

The election, as a rule, is a foregone conclusion before the balloting begins. The numerical strength of each group in the national assembly can be figured with approximate accuracy and their alliances are usually an open secret. During the days which precede the election there is a lively scurrying among the leaders both big and little, with conferences and confabulations galore, the sort of thing that goes on during the first few days of a national party convention in the United States. Out of this series of manœuvrings some candidate usually emerges with enough backing to ensure him a majority when the assembly meets. He may be a candidate who was looked upon as a logical one from the start (the presiding officers of the two chambers are usually regarded as logical candidates), or he may be someone to whom the various groups have been forced to turn in a spirit of compromise. Dark horses and favorite sons go to the Elysée as well as to the White House.

This system of election does not ordinarily lend itself to the selection of strong, aggressive personalities. The successful candidate must be someone upon whom enough senators and deputies of varying preferences can agree—and it is not the habit of compromisers to pick strong men. Clemenceau once said ironically that he favored a certain candidate because of his “complete insignificance.” Vigorous leaders, with minds of their own, do not make good candidates under a system of election by party blocs. Nor,

Logical candidates and dark horses in France.

Effect of the system on the caliber of the candidates.

if elected, are such men likely to make good presidents—as the history of the Third Republic has shown on at least two noteworthy occasions.

The election procedure.

At any rate the actual election, under ordinary conditions, is merely a dignified ceremony. The senators and deputies, on the day appointed, troop out from Paris to Versailles. The national assembly convenes in its great hall, and is called to order by the president of the Senate. Not infrequently the president of the Senate is himself one of the candidates for the presidency, but he takes the chair all the same. The French see nothing incongruous in having one of the rival candidates preside over a session at which his own election or defeat is to be determined. An urn is then placed on the tribune (a platform from which speakers address the assembly when it meets to discuss constitutional amendments), and the names of all the senators and deputies are called by a herald. Inasmuch as there are nearly nine hundred senators and deputies in all, this solemn calling of the roll consumes a good deal of time. As each member's name is reached he walks to the tribune and formally deposits in the urn a slip of paper bearing the name of his choice for the presidency.

Exclusions.

Any French citizen is eligible to be chosen unless he has been deprived of his political rights by the judgment of a court, or unless he is a member of a family that has reigned in France during the royalist or imperial epochs. This last-named exclusion was added to the constitution by one of the amendments of 1884. It was dictated, of course, by the fear that some Legitimist, or Orleanist, or Bonaparte might manage to get himself chosen president and thereupon repeat the coup d'état of 1851. The constitution does not expressly exclude women from being elected to the presidency; but as yet there is no woman suffrage in France and the national assembly contains no women members.

First and second balloting.

Official tellers, whose duty it is to count the ballots, are drawn by lot from the entire membership of the assembly, and in an adjoining room they commence their work as soon as the last name has been called. If, when the result of the vote is announced, it appears that someone has received an absolute majority of all the votes cast, he is forthwith declared elected; but if no one has met this requirement of an absolute majority, the assembly proceeds to ballot a second time, and if necessary it keeps on balloting like an American party convention until a choice is made. As a rule, how-

ever, the first ballot is decisive, because a sufficient bloc has been pledged in advance. On only three occasions has a second ballot been necessary, and in no case has the assembly had to ballot a third time.¹ The newly-elected president is then installed at the close of his predecessor's term, but if he has been chosen to fill an unexpected vacancy he takes office at once, for there is no vice president in France.² In the interval between the death or resignation of one president and the installation of his successor the council of ministers is vested with the chief executive power and exercises it by the issue of ministerial decrees.

Judged by the honors accorded him at his election and thereafter, the President of the Republic is a very exalted personage. He is saluted by one hundred guns (the President of the United States gets only twenty-one); he travels in de luxe trains and glittering brigades of French troops turn out to be reviewed by him wherever he goes. He has all the homage that is accorded to royalty in monarchical countries. During his term he has the use of the Elysée Palace as an executive mansion, and of the Château de Rambouillet as a country residence; he is provided with a presidential box at the opera and has other perquisites of various sorts. His salary is 1,800,000 francs per annum (about \$90,000 at the present rate of exchange) with an equal amount for household and traveling expenses.

Honors and
emoluments
of the office.

The Third Republic has had twelve presidents in sixty years (1870-1930), so that although the legal term is seven years (with eligibility to reelection) the actual average has been only five years. Casimir-Périer and Deschanel resigned after holding office for a few months only. Four others resigned after varying periods of service—Thiers, MacMahon, Grévy, and Millerand. All four of them were virtually forced out of office by hostile parliaments. Two presidents died in office—Carnot, who was assassinated in 1894, just as his first term was about to expire, and Faure who died suddenly when his term was a little more than half completed. Only three presidents have thus far closed their tenure of office otherwise than by death or resignation—Loubet, Fallières, and Poincaré. Thus the presidential office has been all too closely associated with personal and political vicissitudes.

14
The twelve
presidents
since 1870.

¹ Second ballots were required to reelect Grévy in 1886, to elect Faure in 1895, and to elect Poincaré in 1913.

² When chosen to fill an unexpected vacancy a president does not merely serve for the unexpired term. He serves out the full seven years.

Brief
sketches of
them.

What manner of men have these twelve presidents of the Republic proved themselves to be? Like the elective chiefs of state in other countries they have been of varying quality.¹ Some have been strong-willed and capable; others mere figureheads; others, again, would be hard to rank in either category. But in comparison with American presidents since 1871 there is no trio among them that ranks up to the level of Cleveland, Roosevelt, and Wilson in ability, independence, and statesmanship. Whether, on the other hand, the Elysée has sheltered more mediocrities than the White House during the past sixty years is an arguable question,—although hardly worth the arguing.

Thiers
(1871–
1873).

Adolphe Thiers, the first of the French presidents, was a statesman of world reputation, qualified both by personal capacity and long political experience for the highest office in any land. He had been a prime minister in the reign of Louis Philippe and was one of the great historians of the nineteenth century. His patriotism and his devotion to the interests of France were beyond question, as was shown in his handling of the peace negotiations in 1871. Conservative in temperament he was not an avowed republican at the time of his election, but he became one before he resigned the office in 1873. The Third Republic owes a great deal to its first president, for he tided it through a very critical time.

MacMahon
(1873–
1879).

As successor to Thiers, the assembly elected a man of altogether different stripe, a soldier of Irish ancestry, a marshal of France and a protégé of Napoleon III, by name Patrice-Maurice MacMahon. The Hibernian flavor of this name calls for a word of explanation. MacMahon's ancestors emigrated from Ireland to France in the seventeenth century. Their descendants became thoroughly Gallicized, but apparently did not lose their Celtic fondness for war and politics. Marshal MacMahon made his reputation in the Crimean war and in the War of 1859. He commanded the victorious French armies at the Battle of Magenta. Later, he held a high command in the Franco-Prussian war of 1870, but was wounded before the Sedan disaster came. After the war he put down the Commune in Paris.

Reason for
his election.

The election of Marshal MacMahon (like that of Field Marshal von Hindenburg in Germany fifty years later) was dictated by the royalists and imperialists in the hope that it would be a prelude

¹ A clever portrayal of the French presidents, by Professor Albert Guérard, under the heading, "In the Realm of King Log," may be found in *Scribner's Magazine* for February, 1925.

to the extinction of the Republic. No one imputed to MacMahon the ambition to set himself upon a throne, but it was felt that he would readily make way for a king or emperor if a good opportunity for such shift should arise. But although frankly an anti-republican, MacMahon had too high a sense of personal honor to engage in any royalist maneuvers, and the hour of destiny kept postponing its arrival. So the election of MacMahon, as it turned out, was not a prelude to the overthrow of the Republic, but a death-blow to royalist ambitions.

Marshal MacMahon, like General Grant, made a better showing on the battlefield than in the executive chamber. He was too blunt, too imperious, too domineering. Eventually (1877) he came into controversy with the Chamber of Deputies by virtually repudiating the principle of ministerial responsibility.¹ Urged by the anti-republicans to strain his powers a bit, he endeavored to install and keep in office a ministry which did not have the chamber's confidence. Thereupon the fiery Gambetta, leader of the republicans, declared that MacMahon must either "give in or give up." And when the chamber undertook to make the old soldier give in he had neither the desire nor the unscrupulousness to put through a military coup d'état as his imperial master had done a quarter of a century before.

His conflict
with the
Chamber.

So, when a general election failed to change the complexion of the chamber, MacMahon submitted to its demands, installed a responsible ministry, and thus endowed the Republic with a new lease of life. But his surrender gave the chamber a truculent sense of its own power and the president was subjected to further humiliations. The breaking point was reached in 1879 when the chamber asked him to dismiss from the army certain of his former comrades-in-arms who were suspected of being too strongly Bonapartist in their affiliations. Thereupon he resigned from office, a year before his term would have expired. His retreat was dignified, but he left the presidency with its prestige diminished.

And his
resignation
(1879).

The next president, Jules Grévy, was neither a scholar nor a soldier but a typical bourgeois and an enthusiastic republican. His election indicated that the Third Republic was getting set. The monarchists had so petulantly wrangled among themselves that the country just floated away from them. Grévy was a lawyer by profession, seventy-two years of age at the time of his election, shrewd,

Grévy
(1879-
1887).

¹ See also *below*, pp. 412-413.

cautious, slow-moving, and close-fisted to a degree that soon became proverbial. It was well that he could number shrewdness among his virtues, since there was need for all that he could command. His tenure of the presidential office was a lively one because the chamber kept upsetting his ministries one after another. After a while the people grew tired of this political turmoil and a movement for the revision of the constitution began to make headway. Thereupon the trouble-makers came to the front, particularly the redoubtable General Boulanger of whom more will be said a little later.¹ For a time it looked as if France might again pass under the ægis of a military dictator. Grévy was neither popular nor positive; in temperament and character he was essentially negative; but his native astuteness enabled him to sidestep the pitfalls. He even managed to secure his own reelection in 1886, mainly because no strong candidate appeared in the field against him. But his second term was of short duration, for the Wilson scandals forced his resignation before the close of 1887.²

Carnot
(1887-
1894).

Grévy's successor was a "dark horse" among the presidential candidates. There were three outstanding candidates for the post, no one of whom seemed likely to obtain a clear majority in the national assembly. As a compromise Clemenceau persuaded the leaders to agree upon Sadi Carnot and he was chosen on the first ballot. Carnot was a civil engineer by profession, a former minister of public works, and the heir to a historic name, a cultivated, industrious, and well-intentioned statesman of fair ability whose chief desire was to make the wheels of government run smoothly.³ But in this he did not succeed. The Boulanger agitation, the Panama scandals, and other high explosives shook the country. Radicals and revolutionaries used the opportunity to fish in the troubled waters. France was overrun with *démolisseurs*. The air became surcharged with rumors of bribery and corruption, involving everyone from ministers down. The whole country seethed with restlessness. Presently one anarchist threw a bomb into the Chamber of Deputies; another stabbed the president and killed him. These outrages brought the excited nation back to its senses.

The reac-
tion after
his death.

The murder of Carnot was followed (as such tragedies always are) by a wave of popular indignation. The country rang with demands

¹ *Below*, pp. 493-495.

² For a brief account of these scandals, see *below*, p. 493.

³ He was a grandson of Lazare Carnot, the "organizer of victory" during the Great Revolution.

for law and order, for a suppression of radicalism, for the application of the iron hand. There was a reaction to conservatism, and on the crest of this wave a leader of the conservatives was swept into the presidency. This new incumbent of the office was Casimir-Périer, a statesman of high reputation for energy, one whose ancestry, social position, and affiliations seemed to provide a sufficient guarantee that he would bring the country back to normal conditions.

Casimir-Périer was no neophyte in French politics, for he had already served as president of the chamber and as prime minister. But he was too masterful a man to content himself with a career of inactivity and should never have been chosen to a figurehead post. When he found that there was no organized anarchism, and that the social order was safe, he chafed in his narrow cage. "I cannot reconcile myself," he said, "to the impotence to which I am condemned." Moreover, he was too emotional and too sensitive to withstand the volleys of criticism and vituperation which came at him from behind the barricades of radicalism. The Dreyfus affair, which now came to the front, worried him greatly.¹ Not having sought the presidency, Casimir-Périer saw no reason why he should worry himself to death in an office which afforded no scope for the exercise of his abilities. So he decided to resign and was out of the presidency in less than six months from the date of his election.

Casimir-
Périer
(1894-
1895).

For the second time within a twelvemonth the national assembly was convened to choose a president. On the first ballot the radicals were united while their opponents were not. But the latter closed up their ranks on the second ballot and secured the election of Félix Faure. Unlike his two immediate predecessors, Faure was a man of humble birth who had risen by his own diligence to be a wealthy shipowner and member of the ministry. He was known as a safe and sane type of statesman. There was no danger that he would become a boss or dictator. And the juncture called for sanity, for extreme caution, because the Dreyfus case was now turning the whole country into a bedlam. The new president disappointed his friends in this respect, for he showed poor judgment in allowing himself to be drawn into an alliance with the anti-Dreyfusards and thus becoming a center around which the storm could rage. Before the controversy was over he died sud-

Faure
(1895-
1899).

¹ See *below*, pp. 496-497.

denly, and of course the Paris gossips added "mysteriously," but there appears to be no real basis for their suspicions in this case.

Loubet
(1899-1906)
and Fallières
(1906-1913).

The next three presidents, Loubet, Fallières and Poincaré, served out their septennates without mishap. Together their terms covered the first two decades of the new century. Loubet and Fallières were unaggressive, self-effacing men who had risen from the ranks of the peasantry. Both had singularly uneventful terms in office, for although there were some political flare-ups, more particularly over the relations of church and state, the grave dangers which threatened the Republic in its earlier days had now subsided. Loubet was occasionally suspected of having opinions of his own, but they never emerged from beneath his tall silk hat. Fallières revived at the executive mansion the bourgeois virtues of economy and thrift, just as Calvin Coolidge did in the White House twenty years later—but with this difference, that Coolidge was admired by his countrymen for it while Fallières got himself lampooned as the country's champion tightwad.¹

Poincaré
(1913-1920).

The choice of Raymond Poincaré in 1913 was fortunate. A man of marked personal capacity and extensive political experience he had the task of carrying the presidency through the entire period of the world war. There were times when "defeatism" seemed to be on the point of getting the upper hand in French politics. A weak personality in the Elysée during those years would have been a national catastrophe. On Poincaré's retirement it was generally assumed that the octogenarian Clemenceau, now known as "Old Father Victory" by reason of his having served as prime minister during the closing year of the great conflict, would be chosen as his successor. But Clemenceau was an anti-clerical and in his long political career had left a long trail of bruised enemies behind him. These now united to encompass his defeat. They succeeded in forming a bloc behind a rival candidate, Paul Deschanel, and elected him. So the Old Tiger went his way, while the booming of guns welcomed the accession of a journalist-statesman from the next generation.

¹ On one occasion, it is said, he subscribed a thousand francs to a relief fund after a catastrophe had occurred in one of the French cities. Madame Fallières reproved him for this largesse, whereupon the President retorted that he was going to even things up by cancelling, on account of the disaster, a scheduled reception at the Elysée. "So I am still ahead of the game," he chuckled, "*J'y gagne encore*," and the expression was seized upon by every cartoonist in Paris.

The new president was not only young: he was brilliant, aggressive, and popular. But Deschanel was not a man of destiny and his tenure of the office proved to be even shorter and more tragic than that of Casimir-Périer had been. A mental breakdown came upon him with inexplicable suddenness and snatched away the prize which he had labored many years to gain. The first public intimation of it came when the President of the Republic was found, early one morning, trudging along the railroad track in his pajamas. He had leaped from a train. They sent him to Rambouillet to recuperate, and he walked out into a pond. Then his friends persuaded him to resign. He was in office but a few months and died soon after he left it.

Deschanel
(1920).

As his successor the assembly chose Alexandre Millerand, a publicist who had figured prominently in French political life for more than twenty years. He had begun his career as a socialist, at a time when socialism was low in the public favor, but later antagonized his socialist friends by entering a bourgeois ministry. Thereafter his rise was steady; he eventually became prime minister and gained the confidence of the conservative elements in the chamber. Although a heavy, sleepy-eyed, ill-garbed man in appearance there was nothing sluggish in Millerand's mentality, as France soon discovered. He was a man of ideas and of action, although his ideas were not always sound nor were his actions always wise.

Millerand
(1920-
1924).

Millerand began his term with a declaration that the powers of the president ought to be increased. The presidential office, he believed, ought to be approximated to that of the United States. There was nothing new or startling about this: other presidents had said it before. But Millerand intimated that he proposed to put his theory of presidential influence into operation whenever the opportunity might arise. It did not arise for a few years because Poincaré had come back into office as prime minister and the two high executives worked amicably together. The relations between the two became so close, in fact, that the president drew upon himself the bitter hostility of Poincaré's political opponents. They felt that this close alliance with the prime minister's "national bloc" was not in keeping with the strict political neutrality which the French constitutional system expects the chief of state to maintain. Accordingly, when Poincaré lost control of the chamber at the elections of 1924, the incoming *bloc des Gauches* insisted that the president as well as the prime minister must resign.

His partisanship and the results.

Doumergue
(1924-
1931).

Why so few
great and
striking
men?

The answer
is in the na-
ture of the
post.

Millerand at first declined to comply with this demand, but he found that no ministry possessing the confidence of the chamber could be formed so long as he retained the presidency. There was nothing to do but accept the situation and relinquish his office. In his place the national assembly elected Gaston Doumergue, presiding officer of the Senate, a colorless figure with a negative political record. It was said that Doumergue, while a member of parliament, had "never voted for a tax or against an appropriation." He was counted upon neither to reign nor to govern,—an expectation which he has fulfilled to the letter. The next election, in the ordinary course of events, takes place in May, 1931.

It will be seen, therefore, that men of all sorts have held the chief executive office in France, as they have done in America, and are likely to do in any republic. King Log and King Stork have both had their turn. In France, as in America, the critics complain that great and striking men are ignored for mediocrities. Gambetta, Ferry, Dupuy, Waldeck-Rousseau, and Clemenceau failed to reach the Elysée, even as Webster, Clay, Calhoun, and Blaine failed to reach the White House. The reasons are much the same in both countries. Men of strong and aggressive personality do not usually make good candidates. By being strong they incur the suspicion of the party leaders. By being aggressive they create too many centers of antagonism. The party leaders in both countries prefer "safe" men who will not insist upon coloring the whole government with their own individuality. In France this is almost necessarily the case, for the experience of President Millerand showed that belligerent partisanship is out of place in the presidential office. A strong man naturally desires to govern, which is exactly what a French president is not supposed to do.

The Fathers of the Third Republic made a serious mistake when they provided, on the one hand, that the president should be chosen by the representatives of the people and on the other hand that he should have only nominal powers. Under such an arrangement there are only two alternatives—either that men without dominating traits will be chosen, or that strong men will make trouble. The nation which entrusts only nominal authority to its chief of state must not expect to find a succession of Bonapartes, Bismarcks, Lincolns, and Gladstones in that high office. To obtain capacity in any public office you must bestow power. If a country insists upon having a figurehead at the pinnacle of a government

the best way to secure him is by the law of primogeniture. There is some danger that even by taking the eldest son of an eldest son you will occasionally obtain a monarch who desires to govern as well as to reign, but the danger is less by this method than by any other. Among all forms of executive organization an elective monarchy has probably the least to be said for it.

What are the powers of the French president? In general they are surprisingly like those of the English king. He summons the two chambers of parliament; he may propose laws; he has a suspensory veto on laws passed by the French parliament (but he never exercises it); he appoints all the higher officials; he negotiates treaties; he sees that the laws are executed; he is the commander-in-chief of the army and navy; he has the power of pardon; and he may dissolve the Chamber of Deputies if the Senate concurs, but there has been no such dissolution for nearly half a century.

Powers of the president:

(a) in form.

All these powers are given him by the constitutional laws of France, subject only to one proviso, namely, that they shall be exercised by him on the advice of responsible ministers. But this proviso is an all-important one. It is so important, indeed, that its insertion makes all the difference between real power and the shadow of it. Those who have studied the government of England will need no assurance on that point. The provision for ministerial responsibility means that France has the parliamentary type of government like England, and not the presidential type of government like the United States. Every official act of the French president must have a ministerial countersignature. The only document that does not require it is his letter of resignation.

(b) in fact.

To the mind of the average American the term republic suggests a particular form of government, namely, the antithesis of monarchy. Anything that calls itself a republic, most Americans seem to think, must bear some resemblance to the American Republic. But there is no magic in terminology. You can have a republic which is a monarchy in nearly everything but name. And that is the sort of republic which the French people have chosen to set up. It is a unitary republic, wholly unlike that of the United States, which is federal. It is a parliamentary republic, wholly unlike that of the United States, which is presidential. It is a republic without a system of checks and balances. If you want to find the prototype of the French president look therefore to Buckingham Palace, not to the White House.

A royal analogy.

Powers in relation to the chambers:

The President of the French Republic summons the Senate and the Chamber of Deputies for their annual sessions, and prorogues them when their work is done. Both of these things he does on the advice of his ministers. But if he fails to convoke them prior to the second Tuesday in January, the two chambers meet of their own accord. And their sessions must not be brought to an end by the president until they have sat for at least five months. Meanwhile he may adjourn the chambers, but not for more than a month at a time and not more than twice in the same session. All this, of course, differs essentially from American practice, for the President of the United States does not regularly summon, adjourn, or dissolve either branch of Congress.

1. The initiative in lawmaking.

The constitutional laws of 1875 give the French president the right to initiate proposals of legislation; but this means nothing, for he can only initiate through his ministers. And it is simpler for the ministers to bring in the proposals directly. The president does not address either of the two chambers in person, but he may communicate with them by sending messages to be read from the tribune by some member of the ministry. No president during the past fifty years, however, has sent such messages except to express thanks for his election or to announce his resignation. There would be no point in his sending messages of any other sort for they would have to be countersigned by a minister; hence a presidential message would amount to nothing more than a ministerial communication which the minister could better make on his own responsibility. The president's initiative in lawmaking is of no greater importance, therefore, than that of the English king.

What it amounts to.

2. The suspensory veto.

The President of the Republic has a suspensory veto. When a law has been passed by both branches of the French parliament it does not go into effect at once. It must first be officially promulgated, in other words the president must publish it and declare it to be in force. This he ordinarily does within one month, but if parliament designates the law to be urgent he must promulgate it within three days. If, however, he disapproves the measure, he is empowered to withhold promulgation and return it to the chamber for reconsideration. Then, if the chambers stand their ground, he must promulgate the measure at once. No two-thirds vote of the chambers is necessary in France, as in the United States, to override the president's veto.

The suspensory veto in France is of no practical consequence because it is never exercised. No president since 1875 has sent back any measure for reconsideration, and it is not likely that any president ever will. The reason is that he could not take such action except on the advice of his ministers, and these ministers are in control of the French parliament, otherwise they would not be ministers. So, if the ministers disapprove a measure they oppose its passage in the Chamber of Deputies, and if they do not succeed in defeating it they resign from office. They could hardly let such a measure pass both chambers and then advise the president to send it back for reconsideration. It is difficult to conceive of a responsible ministry being able to advise any sort of executive veto on the action of a legislative body by which they are controlled. The insertion of this provision in the French constitutional law of 1875 indicates that its framers did not clearly understand all the implications of ministerial responsibility. So the fact is that the President of the Republic has no veto power; he promulgates every law as a matter of routine. In doing this he does not affix his signature to the law but to the decree of promulgation which accompanies it.

It is never exercised.

All this must not be understood to imply, however, that the President of the French Republic has no share in the process of lawmaking. He neither proposes laws nor vetoes them; but his office has a very considerable part in the elaboration of laws after they are passed. This is because there has been developed in France a form of legislative activity with which Americans are only to a slight degree familiar, namely, the practice of supplementing laws by the issue of ordinances, decrees, and administrative instructions. The laws passed by the French parliament are usually couched in general terms. Unlike the statutes which are enacted by the British parliament or the American congress, they do not try to include every detail and to provide for every possible contingency that may arise. On the contrary, they lay down certain broad principles and leave the details to be supplied by executive decrees issued in the name of the president.¹

3. The ordinance power.

These presidential decrees must not, of course, modify any substantive provision of the law; but so long as they keep within its

Their scope

¹ Most of the general statutes conclude with some such provision as this: "An ordinance of public administration shall determine the measures appropriate for securing the exercise of this law." Sometimes the provision is more specific in prescribing the scope and nature of the ordinance.

general purport they can stiffen or liberalize the details at will. Any controversy as to whether the ordinance is out of harmony with the general provisions of the law goes to the highest administrative court for decision, that is, to the council of state.¹ For this reason all ordinances of public administration are submitted to the council of state for scrutiny before being promulgated. In some instances the chambers have gone so far as to turn certain matters over to the president for regulation by ordinance without laying down any statutory rules at all. All this gives the president some influence upon the details of legislation although one should hasten to add that the president takes no personal responsibility for the drafting of these decrees. The work is done by his ministers, or, more accurately, by subordinates of the ministers.

Executive
legislation
in America.

Americans who go to France have observed the billboards covered with multifarious ordinances and decrees, issued by ministers, prefects, subprefects, mayors—by officials of all ranks from the president down. They often remark that the French seem to have a free-for-all scheme of lawmaking, and congratulate themselves that there is nothing like that in the U.S.A. But they are wrong. There is a good deal of it in the United States. Congress leaves a great many things to be settled by executive orders and regulations. Take the immigration laws, the postal laws, the laws governing interstate commerce, and, as the best illustration of all, the federal tax laws. They are not posted upon the billboards, to be sure, but there are whole volumes of orders and regulations that have been issued by the executive branch of the American national government under the general provisions of these statutes. When the secretary of labor, "by order of the President," issues a set of rules relating to the handling of immigrants at the port of New York, he is doing precisely what the French ministers do by ordinance or decree. It is true, of course, that there is not yet so much executive legislation in the United States as in France, but it is growing rapidly.

4. The
power to
dissolve the
chamber.

The affair
of May 16.

The President of the French Republic with the approval of the Senate, has power to dissolve the Chamber of Deputies at any time, but only in one instance has there been such a dissolution. This was on the occasion of the famous *Seize Mai* in 1877 when President MacMahon appealed to the country in the hope that it would support his attempt to keep a reactionary ministry in power.

¹ See *below*, pp. 544-546.

But the country refused to uphold the president's action and by so doing ultimately forced him to resign.

Thereby was established the principle that a president who dissolves the chamber gives his own tenure of office as a hostage to success. If a ministry cannot retain control of a majority in the Chamber of Deputies it must not, according to the usages of French government, advise the president to dissolve the chamber. It is not the custom in France, as in England, to regard the ministers as having the right to appeal from the chamber to the electorate. In France such action is deemed to have the flavor of a coup d'état. So, if a ministry loses control of a majority in the chamber it must resign. It does not have the alternative of procuring a dissolution. If a ministry, while still retaining control of a majority in the chamber, should advise a dissolution (with the concurrence of the Senate) the president would have to act in accordance with this advice; but it is hard to imagine a French ministry doing anything of the sort.

The doctrine established thereby.

All civil officials, all officers of the army and the navy, are appointed in the name of the president. But the actual appointing power resides in France just where it resides in England. In neither country is there any personal discretion on the part of the titular chief executive. In France all the higher officials of administration are nominated to the president by his ministers, and are then formally appointed by presidential decree. It is true that the president sometimes recommends certain candidates to the favorable attention of the ministers, just as any citizen of the Republic has the right to do; but the ministers are under no obligation to heed such recommendations. An appointment is virtually made when the ministers agree on it, and occasionally it is announced before the presidential decree has been prepared. Casimir-Périer, during his short and fretful term of office, complained that his first knowledge of high appointments often came to him through the morning newspapers, the ministerial nominations reaching him later in the day.

5. The appointing power.

Appointments to subordinate posts are made by the ministers directly, and these include the largest number of positions. In each case a decree of appointment is issued over the signature of the minister concerned. The president, on the advice of his ministers, may also remove officials from office, subject to a few constitutional exceptions. Ordinarily no new positions may be created except by action of parliament, which alone has power to appropri-

Subordinate appointments.

ate money for salaries; but in certain contingencies new offices may be established by presidential decree. Parliament also prescribes the qualifications for every office, and it has dealt with such matters at great length. In France, as in other countries, the power to grant pardons is given to the chief executive. This authority he exercises, in all cases, on the advice of the minister of justice. The constitution expressly provides, however, that an amnesty (that is, a general pardon to all offenders of a designated class) must have the assent of both chambers.

6. The president as commander-in-chief.

The President of the Republic is commander-in-chief of the army, the navy, and the air forces. On the advice of the minister of war and the minister of marine he determines where each unit of the armed forces shall be stationed. But the size of the military, naval, and air establishments is determined by parliament which fixes the annual quota of recruits and appropriates the money required by all branches of the service. By the provisions of the French constitutional laws a declaration of war requires the assent of both chambers; but it is self-evident that the ministers, who control both the diplomatic policy and the disposition of the armed forces, may create a situation in which the chambers have no alternative but to give this assent. The same is true in the United States where Congress alone can declare war, but where the president and his cabinet can force a controversy to a point at which no congressional discretion would remain.

7. His relation to foreign affairs.

In international relations, however, the President of the Republic is a figure of far less importance than is the President of the United States. It is true that ambassadors who come to Paris as the diplomatic representatives of other countries are accredited to him. It is also true that, in form at any rate, he appoints the French ambassadors at other capitals. The instructions to these diplomatic representatives are also given in his name. But the actual framing of the instructions is in the hands of the minister of foreign affairs and his immediate subordinates. So it is with treaties. They are negotiated, in the name of the president, by the same minister. They are signed by the minister of foreign affairs or by somebody whom this minister designates. As a matter of courtesy the president is kept informed regarding the course of diplomatic affairs and the negotiation of treaties. As a matter of courtesy, also, the ministers often seek his opinion, but they are under no obligation to be guided by it.

The French president's influence upon foreign policy, in a word, can only be exercised in an indirect and unofficial way. The American reader need not be reminded that no such procedure is followed at Washington. In America the president may (and sometimes does) give diplomatic instructions directly from his own pen, without consulting any of his official advisers, not even the secretary of state. During the world war it was President Wilson's custom to prepare diplomatic communications on his own typewriter and then send them to the state department to be signed without alteration.

An American comparison.

It is not a constitutional requirement in France, nor yet does usage require that all treaties shall be laid before parliament for ratification. The terms of treaties need not be communicated to the chambers if the "interest and safety of the state" require them to be kept secret; but treaties of peace, treaties of commerce, treaties which involve financial obligations, and those which relate to the personal status or the property rights of French citizens in foreign countries do not become effective until they have been communicated to both chambers and ratified by a majority vote in both of them. The same is true of treaties which involve any change in the boundaries of territories belonging to France.¹ But military agreements and treaties of alliance do not come within the foregoing category and they have usually been kept secret. The terms of the French alliance with Russia, and of the entente with England prior to the world war, for example, were never submitted to the French parliament. But the Covenant of the League of Nations, to which France is now a party, requires that all treaties (including treaties of alliance) shall be registered with the secretariat of the League and made public.

Treaties.

The French president is not amenable to the jurisdiction of the ordinary courts. He may not be arrested, tried, or condemned for any offense, civil or criminal. But provision is made for his impeachment in case he is charged with the crime of high treason. The charge must be brought by the Chamber of Deputies, and the impeachment is tried by the Senate. A majority is sufficient to convict, and no limit is placed upon the penalty which may be imposed. In both these respects the French procedure differs from

How the president may be removed from office.

¹ The establishment of a protectorate, however, does not require action on the part of the chambers. Nor has the rule relating to boundaries been strictly adhered to. The Franco-British agreement of 1889 which established certain boundaries on the west coast of Africa was not submitted to the chambers for their assent.

that laid down by the constitution of the United States which requires a two-thirds vote for conviction and restricts the penalty to removal from office and disqualification. No president of the French Republic has ever been impeached.

The president and the prime minister.

The narrowness of the president's part in legislation, in the making of appointments, and in the conduct of foreign affairs must not be overemphasized. For be it borne in mind that the president chooses the prime minister (who, in turn, selects the other ministers) and he sometimes finds himself able to exercise considerable discretion in making the choice. He is not always under obligation to choose a designated individual as his prime minister. This is because there is no dominant party in the French chamber but only a dominant bloc. And this bloc may contain more than one leader who is in a position to command its support. On such occasions the president may use his own judgment in selecting a prime minister, but these occasions are becoming less common and in any event his range of choice is never very wide. Usually he confers with the presiding officers of both chambers, obtains their advice as to the man who is best qualified to form a new ministry, and then follows it. Remember, too, that the president is himself no tyro in practical politics. He has had to do with parties and factions and blocs. He knows who's who in the chamber. And not often does he fail to pick the right man, that is, a prime minister who can command a majority.

One over-shadows the other.

To choose anyone who cannot hold the confidence of the chamber is to bring trouble upon his own shoulders, for it is the prime minister, not the president, who steers the ship of state. Raymond Poincaré was President of the Republic from 1913-1920. His name and fame were little known outside the bounds of France during these seven eventful years. But when Poincaré became prime minister in 1921 his name went almost daily into the headlines of the newspapers in all parts of the globe. What he had to say about the occupation of the Rhine frontier or about German reparations was eagerly read everywhere, for the world realized that he had now become the real and not the nominal spokesman of his people. The President of the Republic gets the honors and the salutes; but it is the prime minister whose utterances go on the wires and cables.

Many Frenchmen are far from satisfied with the rôle which the constitutional laws have given to their chief of state. "It is a

fundamental principle of the constitution," says one cynical writer, "that the president shall hunt rabbits and not concern himself with affairs of government." But three and a half million francs per annum would seem to be a high price to pay for a rabbit-hunter, who is not always an expert at that.¹ Another French critic speaks of the president as condemned to "listen at conferences where he is supposed to express no opinion and to promulgate decrees which he cannot disapprove." This lack of power has naturally impaired the prestige of the office for no man can be compelled year after year, to act upon the advice given him by second-rate politicians without losing the public respect.

The future of the presidential office.

So there are some who believe that the presidential office should either be abolished altogether, or else made a position of real power, as it is in America. From time to time the various radical parties have urged the substitution of a plural executive as in Switzerland, and on one occasion a constitutional amendment to this end was proposed in the national assembly, but it was ruled out of order. Of late years the proposal to abolish the presidency has been dropped and the suggestion that its powers be increased has been obtaining more serious discussion.

The alternatives.

But nobody has been able to suggest a way of increasing the president's authority without changing both the spirit and the form of French government. A ministry must be responsible either to the chief of state or to the legislative body. It cannot be responsible to both, for no ministry can serve two masters. There is no way to increase the authority of the president except by taking power from the ministers, and through them from parliament. This, the French parliament is not in the least inclined to do. It does not propose that the executive shall become a coördinate branch of the government as it is in the United States. Far from showing any disposition to relinquish any of their powers, the chambers have steadily striven to usurp what little authority the president has not already lost. It was thought in some quarters that the election of Poincaré to the presidency in 1913 would be followed by a rise in the prestige of the office, for Poincaré was the

Where the difficulty comes.

¹ It is the president's obligation to hold official shooting parties at Rambouillet, even though he may be very gun-shy himself. Some years ago it was gossiped all over France that a certain general owed his promotion to the fact that he had been riddled, *a posteriori*, with rabbit-shot from a gun in the hands of an erratic chief of state who persuaded the minister of war to salve the wounded warrior's feelings by an advance in rank.

ablest and best-equipped statesman who had gone to the Elysée since the time of Thiers. But even under Poincaré the powers of the presidency did not expand. Again, in 1920, when Millerand rode to the palace amid the booming of a hundred guns it was predicted that here at last was a man who would not fear to put the issue to the test. But the prophets were once more astray as the triumph of the chamber demonstrated in 1924. When the chamber forced Millerand out of office, before his term was half run, it settled the question of political supremacy for some time to come. So the President of the Republic remains, and doubtless will remain, a *roi fainéant*,—a phantom king without a crown.

The position and powers of the president are fully discussed in Adhémar Esmein, *Droit constitutionnel français* (8th edition, 2 vols., Paris, 1927), Vol. I, pp. 32–207; Maurice Hauriou, *Précis de droit constitutionnel* (12th edition, Paris, 1929); Léon Duguit, *Traité de droit constitutionnel* (2nd edition, 5 vols., Paris, 1921–1925); G. de Lubersac, *Les pouvoirs constitutionnels du Président de la République* (Paris, 1911); Jean Devaux, *Le régime des décrets* (Paris, 1926); Henri Leyret, *Le président de la république* (Paris, 1912); and E. M. Sait, *Government and Politics of France* (New York, 1920), chap. ii. On the characteristics of the presidents see E. A. Vizetelly, *Republican France: Her Presidents, Statesmen, Policy, Vicissitudes and Social Life* (London, 1914), and the various histories of the Third Republic mentioned on p. 395.

CHAPTER XXII

THE MINISTRY AND THE ADMINISTRATIVE SYSTEM

France is governed, eight months of the year by a parliament, and four months of the year by a ministry.—*Émile Faguet.*

Many years ago Raymond Poincaré, at that time minister of finances, was strolling along a country road in one of the French provinces when he heard a voice cry out from behind him: "Get along with you, you confounded minister." Less surprised at being insulted than at being recognized, he turned around and saw a peasant trying to make a donkey move faster. "There's no making this minister go," growled the peasant. Thus M. Poincaré learned that in certain corners of France an ass is called a *ministre*, not out of disrespect for this humble beast of burden, but because he is the chief servant of the peasantry, entrusted with all manner of work that needs to be done. And after all, Poincaré goes on to ask, are not ministers of state the servants of the nation? For the term, in Latin, means the lowliest, just as its antithesis (*magister*) means the greatest.

The derivation of a term.

[The ministers of the Republic are the servants of the people, accountable to the representatives of the people in parliament.] In France, as has been shown, the president is chosen by the two chambers, but is not responsible to either of them. He cannot be brought to task for any official act. There is only one way in which the chambers can directly exert their power upon the president, which is by impeaching him for high treason. The President of the Republic is thus in the position of a constitutional monarch. He can do no wrong, or at any rate no wrong that is cognizable in the ordinary way. But if the president stands above the reach of the chambers, his ministers do not, and it is through them that the French parliament exercises a full and uninterrupted control over the official acts of the chief of state. In England this control is the outcome of usage; in France it rests upon the explicit terms of a written constitution.

The basis of a minister's responsibility.

Origin of
the French
ministry:
A borrowed
institution.

France, nevertheless, borrowed the idea of ministerial responsibility from England. The leaders of French liberalism, after the overthrow of Napoleon, believed that the smooth functioning of English government was largely due to the existence of a responsible ministry, a ministry responsible to parliament. So they transplanted this institution to France, in the hope that it would take root. Through the period of the Restoration and under the Orleans monarchy it struggled along; but during the Second Empire it withered to a yellow stalk. The founders of the Third Republic determined that it must be nourished and revived, so they made provision to that end and their efforts have proved during the past fifty years to have been moderately successful.

What the
French con-
stitution
now pro-
vides.

The constitutional laws of 1875 provide (1) that "every act of the president shall be countersigned by a minister," and (2) that "the ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." Here, in thirty-three words, is an attempt to set down the essential principles of cabinet responsibility as they have been slowly evolved in England during a period of several hundred years. The chief of state is not responsible to the representatives of the people, but he must act through ministers who are responsible. Thus the French constitution, in explicit terms, requires the ministers to exercise the functions of the presidency just as in England usage requires the cabinet to exercise the functions of the crown. In the United States, by way of striking contrast, there is no requirement, either in the constitution or by usage, that all acts of the president shall be countersigned by anybody whomsoever, much less by anyone who is responsible to congress.

How a
prime min-
ister is se-
lected.

The constitutional laws of France make mention, several times, of a council of ministers, but do not prescribe how many ministers there shall be, or how they shall be chosen. Everybody assumed that the president would appoint them, and he has done so. But although the president *appoints* the ministers this does not mean that he *selects* them. He selects only the prime minister, who, in turn, picks all the others.¹ The procedure is almost exactly like that followed in England. The president picks his man for the prime ministership and requests him to undertake the task of getting together a council of ministers or cabinet which can command

¹ The official title is not prime minister but president of the council of ministers, although premier is the customary title.

the confidence of parliament. That done, he merely awaits the outcome.

In making his selection of a prime minister the President of the Republic does not have, as a practical matter, any wide freedom of choice; but he has somewhat more latitude than is given to the king in Great Britain. There the king must send for the recognized leader of the opposition in parliament. He can do nothing else. But in France there is often no recognized leader of the opposition, or, to put it more accurately, there may be several who have approximately equal claims to be regarded as opposition leaders. And this for the reason that there are a dozen party groups in the Chamber of Deputies, each with its own leader, and sometimes with more than one leader. Several parties are usually combined into a bloc; but the bloc does not always have a single outstanding leader. In such cases the President of the Republic, when one prime minister goes out of office, is able to use some discretion in determining which one of these various leaders he will summon to form a new ministry.

To what extent may the president pick and choose?

His task is somewhat simplified by the fact that the exigencies of the moment usually point to some one individual as the logical successor of an outgoing premier. If he is seriously in doubt he confers with those who are best able to judge the relative strength of the various party groups and takes their advice as to the individual most likely to succeed in gathering a majority behind him. More particularly he consults with the president of the Senate and the president of the Chamber of Deputies. They know the twists and turns of party alignment in the respective chambers over which they preside.

The logical choice.

The President of the Republic is assumed to be a neutral in politics; he must show no favoritism. It is his business to pick a winner and he is open to criticism if he does not do it at the first attempt. Occasionally he is fortunate enough to have available two or three good politicians, any one of whom would probably be able to form a working coalition among the various party groups. In such case the president can use his own judgment and summon any one of them. But this opportunity does not come to him very often, and when it does it sometimes places him in an embarrassing dilemma.

Occasionally he has discretion.

Having settled upon his man, the President of the Republic requests him to form a ministry. The request may be declined, as

The process of forming a ministry.

has frequently happened, whereupon the president turns to someone else. There have been times, indeed, when three declinations have followed in succession. But as a rule the president gains a provisional acceptance from the first statesman whom he summons, and the work of cabinet-making begins.

The pour-parlers with party leaders.

The prospective prime minister hastens to confer with the leaders of several party groups, and by offering each group one or more representatives in his ministry endeavors to assure himself of a majority in the Chamber of Deputies. According to the gossip that one reads in the Paris newspapers during a ministerial crisis, all his hours are spent in a hurried round of interviews, overtures, pourparlers, and solicitations. He finds that one leader will come into his ministry if another is kept out, or that he will stay out unless another is brought in. The *démarches* may go on for days before the prime minister succeeds in getting his slate made up.

The final slate.

Perhaps, in spite of all his manœuvering he will fail to solve the puzzle, in which case he returns to the president and suggests that somebody else be asked to take the task in hand. On one occasion there were five abortive attempts to form a ministry before a solution of the problem was found. But when the new prime minister succeeds, he submits to the president the names of his ministerial associates and they are at once summoned to take charge of their respective offices.¹ The president has had no share in the choosing of these ministers, at any rate no open share. He has no power to reject any name submitted to him. He must take the new ministry intact. Then the prime minister confronts the Chamber, asks for its support and usually suggests that it pass a formal resolution of confidence. When this resolution is adopted, the ministry is securely in office until the Chamber of Deputies withdraws its confidence, which it may do at any time. On a few occasions a ministry has been formed with the full expectation that it would command a majority, but on going before the chamber the new prime minister has found his calculations upset.

French ministers do not need to have seats in parliament.

It is not necessary in France, as in England, that all members of the ministry shall be members of parliament. Nor, on the other hand, are they forbidden to be members, as in the United States. The constitutional laws are silent on this question of membership.

¹ The new prime minister is appointed by presidential decree with the countersignature of the retiring prime minister. The other ministers are appointed with the countersignature of the new prime minister.

But as a matter of usage the prime minister is always chosen from among the leaders in parliament, and almost invariably he is a member of the lower chamber. With rare exceptions, too, the ministers are selected from among active parliamentarians. In the early years of the Third Republic it was thought advisable to select the minister of war from among the high officers of the army, and the minister of marine from the list of French admirals; but this practice has not been regularly followed in recent years. A French minister who is without a seat in either chamber is now rather uncommon.

The size of the ministry is not fixed by the constitutional laws or by ordinary statute. The president, with the advice of the prime minister, decides how many members there shall be in each new ministry. A presidential decree fixes the number whenever the new ministry comes into office. The silence of the laws does not imply, however, that the Chamber of Deputies has no control over the size of the ministry; on the contrary, it can reduce or increase its membership at any time by virtue of its control over the appropriations for ministerial salaries. When, therefore, the president fixes the size of the ministry, his action is contingent upon the readiness of the chamber to vote the sums required.

Size of the
ministry.

A uniform salary is paid to all members of the ministry. Ministerial salaries do not vary, as in Great Britain, from one department to another. Even the prime minister in France receives the same salary as his associates. Each minister, in addition to his salary, is entitled to occupy an official residence which is maintained at the public expense. Inasmuch as ministers sometimes change two or three times in a single year this residence arrangement has its inconveniences in the way of movings in and out.

Pay of the
ministers.

Before the world war the French ministry contained twelve members; during the war the number was shifted several times. After 1918 it settled down to about fifteen. The Tardieu ministry (1930) had the following portfolios: (1) justice, (2) foreign affairs, (3) interior, (4) finance, (5) war, (6) marine, (7) public instruction and fine arts, (8) public works, posts and telegraphs, (9) commerce and industry, (10) agriculture, (11) colonies, (12) labor and public health, (13) pensions and (14) liberated regions.

The existing
portfolios.

The prime minister selects one of the foregoing departments for himself, usually the one for which he deems himself best fitted. If he does not take the department of justice, the minister of

The prime
minister
takes one
for himself.

justice ranks next to the prime minister and is vice president of the council of ministers. In any event the minister of justice is president of the council of state (the highest administrative court in France) and keeper of the seals, which makes him the lineal successor of the pre-revolutionary chancellor. The other ministers have departmental duties which, in a general way, are indicated by their respective titles.

Functions
of the min-
isters:

1. The min-
ister of jus-
tice.

The minister of justice occupies a post somewhat akin to that of the attorney-general in the United States. He nominates or appoints the judges and other judicial officers. All applications for pardons are dealt with by him, and his recommendations are followed by the president. The minister of foreign affairs conducts the relations of France with other countries; he has supervision of the diplomatic and consular services. The post is of such high importance that the prime minister, in recent years, has frequently taken it for himself.

2. The min-
ister of the
interior.

The minister of the interior has functions widely different from those which are performed by the secretary of the interior in the United States. He is the general supervisor of the local government in France. All the prefects report to him (see pp. 556-561); and the work of the local police throughout the Republic is under his direction. He is sometimes referred to as the "minister of public order," which is a more descriptive designation than the one which he officially bears.

3. The
minister of
finances.

The minister of finances is a chancellor of the exchequer and secretary of the treasury combined. He prepares the budget and presents it to the Chamber of Deputies. He is responsible for the collection of the national revenues; he has charge of expenditures and loans, and supervision of the currency and banking. In addition he is responsible for the management of the government monopolies, particularly the tobacco monopoly.

4. The
minister of
public
works.

The minister of public works, posts and telegraphs is in charge of public buildings and national highways. He is also postmaster-general of France and manages the telegraph and telephone services which are owned by the national government. The minister of public instruction and fine arts exercises a general supervision over the system of public education, including the elementary, secondary, and technical schools. His supervisory jurisdiction includes the University of Paris, as well as the national libraries, museums, and other public institutions of an educational nature.

The minister of colonies nominates the governors and other officials in the French colonial possessions and has the same general functions as those which pertain to the secretary for the colonies in Great Britain. The ministers of war, of the marine (navy), pensions, of commerce and industry, of public health, and of agriculture have duties which require no detailed enumeration. The minister of the liberated regions has charge of reconstruction work in the territory which was devastated during the world war.

5. The other ministers.

The conscientious minister, says Poincaré, has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened and examined by employés, but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies, who have acquired the annoying habit of recommending candidates for every species of post. Shortly before nine o'clock the minister gets into his coupé or motor car, the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Elysée if there is a council of ministers, or to the ministry over which the prime minister presides if there is a cabinet council. The council sits till noon or even later.

The working day of a minister.

The morning.

On days when it does not sit the minister receives officials or members of parliament. There is an interminable procession of people soliciting favors. After lunch the minister goes to the Chamber or the Senate. When he returns he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. These are orders or decrees prepared by the different branches of his department, awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours in delving through these huge piles of papers. He then receives his chief subordinates, who come to discuss matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess sagacity. Unless the minister is gifted with a great aptitude for work and a rare promptness of judgment he will be merely the tool of his underlings who get things ready for him.¹

The afternoon.

In France, as in England, each minister occupies a dual position. He belongs to a council of ministers which deliberates on matters of general policy and endeavors to guide by its decisions the work

A minister's dual position.

¹ Raymond Poincaré, *How France is Governed* (New York, 1913), pp. 198-199.

of parliament. As such he attends all meetings of the ministry and takes part in its discussions. He also attends the sessions of the chamber in which he is a member, and goes to the other chamber when matters affecting his own department are under discussion. The constitutional laws provide that the ministers have *ex officio* the right to attend sessions of both chambers and to be heard in either when they request a hearing. Thus a minister who is a senator may speak also in the Chamber of Deputies; while a minister who is a deputy must be heard by the Senate when he so desires. And a minister who has no seat in either chamber may nevertheless attend and speak in both. This is an interesting and significant feature of French government.

The under-
secretaries.

The ministers do, in fact, attend the parliamentary sessions regularly, especially in the chambers to which they individually belong. They spend a good deal of time either at the Luxembourg or at the Palais Bourbon when parliament is sitting. This means that it is impossible for them to give such personal attention to their several departments as members of the American cabinet are expected to do. Consequently there has developed during recent years the practice of providing certain ministers with undersecretaries who virtually take full charge of some branch of departmental work. The duties of each undersecretary are prescribed by a presidential decree.

Their
status.

Although these undersecretaries are not members of the ministry, they are regularly summoned to its meetings in order that they may give their advice on matters concerning which they have special knowledge. Therein they differ from the undersecretaries in Great Britain and the assistant secretaries in the United States who do not regularly attend the meetings of the cabinet.¹ In France, the undersecretaries are usually, but not always, members of parliament; but in any case they have the right to be heard in either chamber. They reply to any interpellations that may relate to their own work, and if the reply is not satisfactory they can be forced out of office by an adverse vote of the chamber.

Their re-
sponsibility.

In this sense the undersecretaries are directly responsible to parliament, yet they are not permitted to countersign decrees of the president or to issue ministerial decrees over their own signa-

¹ At Washington, when a member of the cabinet is out of town, the senior assistant secretary in his department is sometimes invited to be present at meetings of the cabinet.

tures. When a ministry goes out of office the undersecretaries go too, but all other administrative officials remain. This permanence of tenure among the administrative staff, in all its subordinate ranks, is of great consequence to the orderly conduct of business in France where ministries have changed so frequently that the whole fabric of administration would long since have broken down were it not for this permanence on the part of those who do the routine work.

The ministry holds two formal meetings a week, usually at nine in the morning. At these meetings, which are known as sessions of the council of ministers and are held at the Elysée, the President of the Republic presides. But at sessions of the cabinet council the President of the Republic does not attend, and the prime minister (or, in his absence the minister of justice) takes the chair. The real business is done in these cabinet consultations; the policy of the ministry is there determined upon, and matters are put in form for final ratification at the more formal sessions. In neither case, however, are any official records kept; the proceedings are strictly secret as in England and in the United States. After each session of the council of ministers, however, the newspapers are given a brief summary in which, as one premier has said, "all mention of the important questions is usually omitted."

Meetings of
the council
of ministers.

*Cabinet
President*

The French prime minister is not the head of his ministry in the English sense. At the more formal meetings of the council of ministers, as has been said, he does not preside. In constructing his ministry, moreover, he is often under the necessity of coaxing the members in, and having done this he is in no position to treat them as subordinates. Individual members of his ministry are well aware of the fact that at a critical juncture they can oust their premier from office by merely tendering their resignations and rallying their co-partisans to vote against him in the chamber. Then they can become members of a new ministry, with some other prime minister at its head. So they sometimes assume a degree of independence which members of the English cabinet would never venture to display. Léon Gambetta once tried to be a prime minister in the English sense, and to lord it over his colleagues, but the cry of "dictation" was set up, and the stormy petrel of French politics had to fold his wings.

Position of
French and
English
prime min-
isters com-
pared.

In France, as has been said, the ministers are jointly and individually responsible. But responsible to whom? "To the chambers,"

What is
meant by
ministerial
responsibil-
ity in
France?

1. The
legal provi-
sion.

2. The
usage.

Individual
responsibil-
ity of the
French
ministers.

according to the wording of the constitutional laws and not, as is the English usage, to the lower house alone. In a general way, the French ministers hold themselves responsible to both chambers, in as much as they reply to interpellations in both. But whether the ministers are under obligation to resign when the Senate votes adversely on the reply to an interpellation—the answer to that question is not so easy. There is a difference of opinion among French legal authorities on this point, and the precedents are not conclusive. On more than one occasion the Senate has voted its want of confidence in ministers without forcing them to resign. On the other hand four ministries have been turned out of office by adverse votes of the Senate—the Bourgeois ministry in 1896, the Briand ministry in 1913, the Herriot ministry in 1925, and the Tardieu Ministry in 1930. In 1923, moreover, the prime minister (Poincaré) went before the Senate on one occasion and demanded a vote of confidence, declaring that his ministry would resign if it were not forthcoming. He got his vote.

Now it is perfectly apparent that strict adhesion to the letter of the law would make the principle of ministerial responsibility unworkable. The Senate and the Chamber of Deputies, being elected at different times and in different ways, are not always of the same political inclination. The Senate, in general, is the more conservative of the two chambers, which is what it was intended to be. Obviously a ministry cannot have the confidence of both conservatives and radicals at the same time. Custom has stepped in to solve the dilemma, for while the Senate has never conceded the exclusive right of the lower chamber to decide whether a ministry shall stay in office, it has tacitly permitted that principle to become operative under all ordinary conditions. So, despite the wording of the constitutional laws, it is in the Chamber of Deputies and not in the Senate that the fate of a ministry is ordinarily settled. One can fairly say that ministerial responsibility in France means responsibility to the lower House, much as it does in England. There is a degree of responsibility to the Senate, but it may fairly be called exceptional.

Indeed, if we regard the usages alone, the responsibility of the French ministers to the Chamber of Deputies is even more direct and more continuous than is that of the British ministers to the House of Commons. This arises from the fact that the tradition of cabinet solidarity does not exist in France. The English tradi-

tion is that all ministers are in the same boat; they float or sink together. It is a case of each for all, and all for each. The opposition in the English House of Commons cannot attack one minister without rousing the entire ministry to his defense. But in France there is no such ironbound cohesion. When an individual minister incurs the wrath of the Chamber his colleagues are under no moral obligation to help him. It all depends on the politics of the situation. They will treat him as a Jonah and let him be cast overboard rather than permit his presence to sink the ship.

There is a reason for this. The constitutional law of 1875 provides that the ministers shall be responsible "both collectively and individually," and the French have assumed that these words mean what they say. How could there be any distinction between collective and individual responsibility if the principle of cabinet solidarity is maintained, as in England? Collective responsibility, they argue, means that all are responsible for their policy, while individual responsibility means that each minister is accountable for his own actions.

The reason
for it.

But when a whole ministry is compelled to resign, this does not mean that an entirely new set of ministers will come into power. More often it merely implies a cabinet reorganization. In the shakeup some weak ministers are dropped out and some stronger ones taken in. But the terms weak and strong, when used in this connection, have nothing to do with the personal capacity of ministers. They are adjectives of politics and refer to a minister's political following only. There have been relatively few ministries during the past fifty years which did not contain some members drawn from among the ministry which had just been overthrown. Even the outgoing prime minister has sometimes been given a portfolio in the new ministry, and occasionally has resumed his place at the head of it. Thus it is that the Chamber of Deputies may vote to overturn a ministry one day and within forty-eight hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head. That, of course, could hardly happen in England.

Recon-
structed
ministries
are more
common
than new
ministries.

This ought to be borne in mind when one reads in English books the statement that "France has had more than fifty cabinets in fifty years." Construed in a literal sense that statement is misleading. It would be as fair to say that an American president has several cabinets because he makes several shifts in the membership

This ex-
plains the
statement
as to "fre-
quent
changes in
ministry."

of his official circle during his term in the White House. A change of ministry in France is often a mere re-shuffling of the cards. It does not usually lead to any important reversal of policy unless, as with the incoming of the Herriot ministry in 1924, the new ministry comes with a mandate from the country after a general election.

A contrast
with condi-
tions in
England.

In England, a cabinet which goes into office with a majority of the House of Commons behind it is rarely turned out by the House, no matter what it does. When an English cabinet falls it is usually (though not always) the result of a general election. In France the contrary is true. There it is the Chamber of Deputies, not the electorate, that ordinarily forces a ministry out of office. On only two occasions during the past fifty years has a French ministry been repudiated by the people at the polls. In all other instances the defeat has come at the hands of parliament. Or, to put it another way: in England the cabinet keeps its hand on the pulse of the country; in France on the pulse of the chamber. The task of the English ministry is much the easier, for while public opinion in a democracy may be "uncertain, coy, and hard to please," it is far less so than is the membership of a loosely-jointed bloc in the legislature.

Another
point of dif-
ference.

There is another difference between the ministers in France and in England. In both countries they perform executive and parliamentary functions, and supposedly give equal attention to each of these phases of their work. But as a matter of fact the executive duties of the English minister are on the whole deemed to be the more important, whereas in France his parliamentary functions appear to have the first call on his time and interest. A British minister who shows good administrative judgment and capacity is ordinarily safe in office so long as the cabinet stands; but in France a minister's security of tenure depends very largely upon his own individual adroitness as a parliamentarian and a politician. This point, of course, must not be pressed too far, for there are exceptions to it in both countries.

The French
bureau-
cracy.

It was pointed out, a moment ago, that the routine work of French administration is carried on by subordinates of the various ministers. Most of those subordinate officials hold their positions under a permanent tenure; they do not go out of office when a ministry resigns. Together they constitute a vast administrative machine, a great bureaucracy which goes right on with its work,

unmindful of changes at the top. Ministers come and go, but neither their entry nor their exit makes much difference in the routine work of the departments. Even dynasties may change, but the bureaucracy neither dies nor surrenders. Paul Deschanel once growled that "France is not a democracy but a bureaucracy." He was right in the sense that it is the corps of permanent officials who do the real work of governing. The ministers assume the responsibility, and ostensibly they determine the administrative policy; but if a French minister should attempt, during his all-too-brief term of office, to recast the traditional way of doing things in his department he would in all probability find himself tackling a bigger job than he bargained for. The minister who heads a bureaucracy is by no means its master.

The French administrative system is well organized. Its keynote is concentration. Functions are devolved by the ministers upon chiefs of services, chiefs of bureaus, chiefs of sections, and so on, all forming a hierarchy of definite ranks and gradations. In each of the ministerial departments there is much the same division and subdivision of work. First of all, the minister has a group of confidential advisers who form his own "little cabinet." The most important of this group, the minister's right-hand man, is known as the *chef du cabinet*. In addition there is a deputy-chief, a secretary, and various attachés.¹ The relation between the minister and his little cabinet is both political and personal; its members hold no other positions; they come into office with the minister and go out with him. No, to be more accurate, they do not always go out with him, for he frequently manages to squeeze them into permanent civil service positions just before he goes.

The routine administrative functions of each ministry are divided into services (*directions*, they are called), and each service has its director. These *directeurs* are officials who have been recruited by promotion from lower positions. They correspond, in a way, to the assistant secretaries at Washington except that they do not resign when a new administration comes in. Each *direction* is again divided into several bureaus, and each bureau has its *chef du bureau* who is also a permanent official. These bureaus are the master cogs in the administrative machine. Without them the

The internal organization of a minister's department:

1. The *chef du cabinet* and his associates.

2. The *directeurs* and the lower ranks.

¹ The undersecretaries (see above, p. 426) are not assistant ministers. They do not form a regular rank in the administrative hierarchy. They are really ministers of the second grade, in charge of special services within the department.

whole mechanism would soon cease to run. They are manned by a large corps of subordinate officials who are classified by ranks and grades. Most of them are appointed to the lower grades in accordance with established civil service regulations and are then promoted on a basis of experience and merit.

The bu-
reaus.

Some bureaus are divided into sections, and these, again, into subsections; but we need not follow the classification any farther. It is enough to say that the whole organization takes the form of a pyramid, with the minister at the peak. All authority converges inward and upward. In France as a whole this bureaucracy makes up an army half a million strong. This may seem to be a surprisingly large number in view of the fact that the United States, with three times the population, has only about 600,000 national officials and employees; but bear in mind that in France there are no state administrations. All the great administrative services are manned by officials of the national government.

The merit
system of
appointing
officials.

France has no general civil service law as in the United States, but a well-organized merit system of appointments has been established by numerous "ordinances of public administration," which have been issued by the ministry with the approval of the council of state. Appointments to the lower positions are based upon competitive examinations, and nearly all the higher posts, with the exception of the very highest, are filled by promotion. These promotions are made by each minister, within his own field, from an annual promotion list which is prepared by a committee of his subordinates. Seniority and merit are both taken into account, and sometimes (but not usually) political influence and personal favoritism also have a part. Officials of all grades are also protected in France against wrongful suspension or dismissal. They are ordinarily entitled to a trial before a "commission of discipline" on which there are fellow-officials of the same rank. The chief weakness in the system is the relative ease with which a minister can suspend some of the merit-rules by his own decrees and make places for political friends, or even for his own relatives.

Nepotism
in the serv-
ice.

Nepotism has been a little too common in the public service of the Republic. Public opinion seems to resent it much less strongly than in England or in America. Nevertheless the French administrative service, in its various ranks and grades, has attained a fairly high standard. Capable young men are drawn into it in large numbers despite the low salaries paid, and most of them seem

to find it an agreeable career. The social prestige which goes with an official position in France and the security of tenure count for much, especially with young Frenchmen who have some private income with which to supplement their salaries.

There are those who find satisfaction in telling the world that parliamentary government has failed in France, that ministerial responsibility has become ministerial anarchy, and that the instability of her cabinets has made France a will-o'-the-wisp among the nations. All this has been so often repeated that a considerable part of the world believes it to be true. But the true test of a government is the way in which it satisfies the people who live under it. It was Aristotle, if my memory serves me right, who first remarked that the only properly-qualified judges of a repast are the partakers thereof. This dictum has been reiterated a great many times and in a great many versions since Aristotle's day, but there are still those who seem to think that the job is one for expert dietitians at a distance. It is quite true that France does things differently from England and America; but it does not follow that she does them worse.¹

A word to the critics of the French governmental system.

There is no general feeling among the French people that their system of parliamentary government has been a failure. Critics of the French system there are in France, to be sure, but they are certainly no more numerous or more vociferous than critics of the American scheme of government in America. Law and order are better maintained in France than in the United States; justice is more fairly and more promptly administered; the work of administration is carried on more economically; there are no spoils systems, no Tammany Hall, no gerrymandering, no pork barrel, no third degree, no lynching bees. There are no hung juries and jury-fixers, ambulance chasers, ward bosses, racketeers, bagmen, hi-jackers, mattress voters, or men who "take the rap." The French have at least enough political capacity to spare themselves these adornments of American life.

How the French people feel about it.

The ministry (or council of ministers) should be distinguished from the council of state. This latter body dates from the morrow of the Revolution and in its earlier days possessed large powers. To-day its functions are only in small part legislative. All ordi-

The council of state.

¹ For a defense of Gallic political competence see the article on "The Political Capacity of the French," by James T. Shotwell in the *Political Science Quarterly*, Vol. XXIV (March, 1909).

nances of public administration, as has been said, are submitted to the council of state before they are issued, this being done in order to make sure that the ordinances do not reach beyond the scope of the laws. Sometimes the council virtually redrafts the ordinance, leaving the president little to do but to sign it. On the other hand the action of the council in such matters is never mandatory; the ministers must submit all ordinances to the council but they are not bound to do what it advises.

Its jurisdiction.

The chief jurisdiction of the Conseil d'État, apart from advising on ordinances of public administration, is now concerned with administrative law, of which more will be said later on.¹ It is here that it renders its most notable service, protecting the citizen against arbitrary action on the part of the public authorities. The council is made up of thirty-five "councillors in ordinary service" or professional members, who are appointed by the President of the Republic under certain statutory rules.² These councillors, by majority vote, render the council's decisions. In addition there are twenty-one "councillors in special service" who represent the various administrative departments and serve in an advisory capacity.

A body of high quality and great importance.

The council of state is in many ways a remarkable body. It combines advisory functions in the making of ordinances with final authority in the adjudication of administrative controversies. It is the supreme administrative court of the Republic. In addition it is a body of legal advisers and technical experts to which the government may turn at any time for counsel in the solution of its problems, a sort of collective attorney-general. It personifies wisdom, experience and impartiality in the science of administration. Thus it serves as an antidote for the poisons of democracy. The French people have a high respect for their council of state, and rightly so, for in personnel it maintains a standard which few public bodies in any country are able to approach and by its work it forms a great stabilizing factor in the government of France.

Léon Dupriez, *Les ministres dans les principaux pays d'Europe et d'Amérique* (2 vols., Paris, 1892-1894) is still a work of considerable value on the development and nature of ministerial responsibility, although it is badly

¹ *Below*, pp. 537-543.

² One of these rules is that at least half the councillors in active service must be persons who have served in designated administrative offices and have qualified themselves for higher appointment by competitive examination.

out of date on some points. There are admirable chapters on the French ministerial system in Adhémar Esmein, *Droit constitutionnel française* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 208-273, Gaston Jèze, *Principes généraux du droit administratif* (3 vols., Paris, 1925-1930), the same author's *Cours de droit public* (Paris, 1929), and Maurice Hauriou, *Précise de droit constitutionnel* (12th edition, Paris, 1929).

Mention should also be made of Duguit's volumes (*above*, p. 418); R. Bonnard's *Précis élémentaire de droit public* (Paris, 1924); H. Noël, *L'administration de la France* (Paris, 1911); Paul Duez, *La responsabilité de la puissance publique* (Paris, 1927); L. Muel, *Les crises ministérielles en France de 1895 à 1898* (Paris, 1899); and Joseph Barthélemy, *Le rôle du pouvoir exécutif dans les républiques modernes* (Paris, 1910). A volume on *Le conseil d'état*, by R. Brugère (Paris, 1910) explains the organization and powers of that body.

CHAPTER XXIII

THE SENATE

The Senate, according to the constitution is designed to be a deliberating, moderating, stabilizing influence. Its function is to impose at least a temporary check upon the exuberance of the deputies who are younger, more numerous, and reflect a more direct expression of universal suffrage.—*Joseph Barthélemy.*

The old tradition.

For more than two centuries preceding the eve of the Great Revolution there was no parliament in France. There were *parlements*, of course, such as the Parlement de Paris, but these were not parliaments in the customary sense. They were not lawmaking bodies. The monarch was the sole lawmaking authority, bound by no constitutional restrictions.

Changes during the Revolution and after.

But the revolutionary assembly changed this situation in 1789 by proclaiming that all legislative power resided in itself. And during the next three-quarters of a century France had a series of new constitutions, some of which provided for a single chamber and some for a legislature of two branches. There was no fixed tradition, but in general the monarchists preferred the bicameral system while the republicans felt that one chamber was enough. Hence the Orleans monarchy (1830-1848) and the Second Empire (1852-1870) had two chambers, while the Second Republic had a single chamber during its brief existence (1848-1852), and the Third Republic began its career in 1871 with one chamber also,—a national assembly it was called.

The existing Senate is the outcome of a conservative victory.

This national assembly, it will be remembered, was not only a legislative but a constituent body; its task was to govern the country and to frame a constitution at the same time. But it found the work of government much easier than that of making a constitution, chiefly because its members could not agree upon what general form the constitution ought to take. More particularly the assembly was badly split on the question whether the new constitution should provide for one house or for two. Without settling this question they could get no farther and for a long time they wrangled over it. The republicans wanted a single chamber, while the

anti-republicans insisted upon having both a Senate and a Chamber of Deputies. In the end the anti-republicans had their way. On February 24, 1875, the national assembly settled the matter by adopting the first of its three fundamental laws, a law which related to the organization of the Senate. "The constitution of France," as one writer has said, "is first of all a Senate,"—which is both chronologically and literally true.

The establishment of an upper chamber was a necessary concession to the conservatives who dominated the national assembly and who felt that a single elective house might rush the country into an orgy of radicalism. They were influenced by exactly the same motives which swayed the framers of the American constitution in 1787. It is a significant fact that conservatives in all ages and in all countries have been partial to second chambers. And for good reason, in as much as history demonstrates that second chambers are generally slow to accept changes and hence are favorable to the vested interests. But the makers of the French constitution were also influenced by the fact that the bicameral system had been adopted by every other country. The example of the United States was repeatedly alluded to, and it carried considerable weight because the American Senate at this time was proving itself to be an effective agency for restraining not only the lower house but the President as well. It had recently given considerable pleasure to French public opinion by refusing to ratify a treaty for the annexation of Santo Domingo which President Grant submitted to it in 1870.

The actuating motives of the conservatives.

But having agreed upon the principle of a bicameral parliament there was still the problem of determining how the members of the upper chamber should be chosen, and this problem gave the national assembly a great deal of trouble. It was taken for granted, of course, that the Chamber of Deputies would be constituted on a basis of manhood suffrage. It was also assumed that the Senate would have to be constituted on a different basis, otherwise it would not serve the purpose which the conservatives had in mind.

The problem of organizing the Senate.

How to devise a Senate that would function as a restraining agency and yet not be too much of a restraint—that was the problem. France had a nobility in 1875, but it was a motley affair, composed of frayed-out families whose lineage went back to the time of the Bourbons, and of sycophants who owed their titles to the favoritism of the Bonapartes. It was without prestige among

The conflicting view.

the people. And in any event a House of Peers did not seem to comport with the forms or spirit of republicanism. On the other hand, the American plan of having senators chosen by the states could not be adopted because there were no constituent states in France. Some new method of organizing the second chamber had to be found. The conservatives desired a Senate appointed for life. The radicals did not want a Senate at all, but insisted that if France must have such an institution the senators ought to be elected by the people.

The final solution.

In the end it was decided that the Senate should be composed of 75 members appointed by the national assembly for life and 225 members chosen for nine-year terms by electoral colleges in the several departments or administrative divisions of the Republic. The life membership provision was designed to supply the Senate with a strong conservative infusion, for these life members were to be named by the national assembly itself. This body, it will be remembered, contained a majority of monarchists, imperialists, and other reactionaries. It was their intention to throw a solid block of 75 monarchists into the Senate at the outset and thus to make sure that it would stay friendly for many years.

How it worked.

But their plan did not work out as they expected. By reason of jealousy and dissensions among the monarchists it proved possible for the republicans to elect more than half the original seventy-five life members from their own ranks. Public opinion throughout France, moreover, soon came to regard appointive life-tenure as an anachronism, and within ten years this feature of the constitution was repealed (1884). Those senators who had been appointed for life were allowed to serve out their days, but as they died or resigned their places were filled by the same process as the elective senators. The last of the life senators passed off the stage a few years ago.

Present composition of the Senate.

To-day, therefore, the French Senate is composed of three hundred and fourteen elective members. The senators, who serve for nine years, are chosen to represent the eighty-nine departments of France, the three departments of Algeria, and the various French colonies. Each department has from one to five senators; the colonies have four senators among them.¹ One-third of the senators retire triennially. The selection is made by an electoral college which is convoked every three years in each department.

¹ For the details of colonial representation, see p. 583.

These electoral bodies are made up of four elements (a) the members of the Chamber of Deputies who represent the department, (b) the members of the general council of the department, (c) the members of the various arrondissement councils within the department, and (d) delegates chosen by the municipal councils of all the communes (cities, towns, and villages) within the department.¹ As there are more than 36,000 communes in France the communal delegates far outnumber all the other members of the electoral colleges and can usually control the election of senators. It is for this reason that the Senate is often called "the great council of the communes."

The original provision was that each commune, no matter what its size, should have one delegate. But in 1884 it was provided that the communes should send from one to thirty-four delegates according to the size of their municipal councils. The delegates are in each case chosen by the council. When there is one delegate only, the mayor of the commune is practically always named; when there are several delegates the mayor and various councillors are selected by their fellow members. But the various communes are by no means represented in strict proportion to the number of their inhabitants. In the electoral college of the department of Bouches-du-Rhône, for example, the great city of Marseilles with half a million inhabitants is represented by twenty-four delegates, while various neighboring villages, with a total population of less than 30,000, are represented by an equal number of electors. This is because no city with the exception of Paris is permitted to have more than twenty-four representatives in an electoral college while every village, however small, is entitled to at least one delegate.

Inequality
of represen-
tation.

When the time for choosing senators arrives, an electoral college is summoned to meet at the chief town of each department. Any French citizen, forty years of age, is eligible to be elected a senator, provided he is not a member of any royal or imperial family that has ever ruled in France. There are no formal nominations; each member writes his own ballot. The contest is conducted on straight party lines—as straight as party lines in France ever are. On the first ballot a clear majority of all the delegates is necessary to elect, and the same is true of the second ballot. But if the department's

The proce-
dure in
French sen-
atorial elec-
tions.

¹ An explanation of these general councils, arrondissement councils, and municipal councils may be found on pp. 561-566.

full quota of senators is not elected on the first two ballots, a third ballot is taken, and on this third ballot a plurality is sufficient.

Influence of
geography.

At the senatorial election of 1930 about three-fourths of the places were filled on the first ballot. In many of the departments there is an understanding that senatorships shall be distributed geographically, each *arrondissement* getting its share when there are two or more senators, and being assured of its turn in rotation when there is only one. For this reason many capable senators have been denied reelection. Frenchmen sometimes say that geography, to a far greater extent than personal merit or political experience, determines the choice of individual senators. A candidate may offer himself for election in more than one department, and these multiple candidates were at one time common. But they have gradually become less so. It is now rather unusual for anyone to be elected unless he lives in the department.

An American
analogy.

The work of the electoral colleges in France reminds one of the nominating conventions in America. There is the same pledging of delegates in advance, the same attempt on the part of the political leaders to manipulate the proceedings, the same forming of alliances and combinations, and the same frequent triumph of dark horses over strong men. There is a similar lavish outpouring of promises, and usually the same charges of bossism and steam-rollering float through the air. The electoral colleges are sometimes very large bodies; that of the department of the Seine has over a thousand members.

Character
of the senatorial
candidates.

It is unusual for anyone to be a candidate for the Senate until after he has made himself well known throughout the department by holding other offices. Most of the candidates are lawyers, journalists, or rural landowners who have served in the Chamber of Deputies. They esteem it a promotion to go to the Senate although the latter is the less important of the two chambers in point of power. They are attracted, no doubt, by the greater prestige which attaches to the senatorships and by the longer term which election to the Senate assures. At any rate there is a periodical migration of deputies to the other chamber, much to the advantage of the latter. A term in the Senate often marks the end of a public career, although there are frequent exceptions to this rule. Many French prime ministers have been drawn from the Senate. Occasionally, too, a senator has reached the presidency. There have

been four such cases during the past thirty years—Loubet, Fallières, Poincaré, and Doumergue.

Among the political parties in the Senate the extremists at both ends, extreme conservatives (*groupe de la droite*) and extreme radicals (*groupe du parti communiste*) are numerically weak, because there are very few departments in which either of these parties can control a majority of the votes in the electoral college. Likewise the smaller factions among the more moderate groups find difficulty in securing the election of senators from their own ranks. Hence the members of the Senate come largely from the Right Center, the Republican Left and the Democratic Left—in other words from the ranks of the liberal-conservatives, the progressives and the moderate socialists. Partisanship is less intense in the Senate than in the Chamber of Deputies, and party leadership is less generally followed.

Their party affiliations.

The Senate has not been so conservative a chamber as its architects intended, but it has justified the expectation that it would be composed of more mature, more experienced, and more distinguished statesmen than the Chamber of Deputies. It is the organ of the governing classes, for in spite of the progress which democracy has made in France the governing classes still maintain their grip, especially in the rural areas. Public opinion is still inspired and guided by men who hold office, who own land or securities, who possess education, and who have some social standing. These various classes control the electoral colleges, and they choose senators from their own ranks. Age and experience, moreover, lend sobriety to opinion. The average age of the senators is between sixty-three and sixty-five. Men who have reached that age are no longer under the illusion that mankind can be regenerated by enacting a few more laws. The very fact that the senators are "elder statesmen" tends to make them conservative, no matter what their party affiliations may be.

General character of the Senate.

In the general quality of its membership the French Senate sets a high standard. Lord Bryce, writing in 1921, declared that no other legislative body has in modern times maintained a higher standard of ability and integrity. Because of its high-caliber membership, its reasonably democratic structure, its sense of official dignity, its orderly methods, and its insistence upon full discussion, the French Senate is often commended as a model of what a second chamber ought to be.

Its personnel.

Popular attitude toward the French Senate.

Yet the French people are not wholly satisfied with their Senate. They complain that the system of indirect election is clumsy and results in the gross over-representation of small towns and of rural districts. One hears exactly the same complaint regarding "government by yokels" that is so frequently put forth by critics of the various state senates in the United States. Many Frenchmen believe, moreover, that the nine-year term is too long, especially since the senators are chosen by delegates who may themselves be three or four years away from the people. It is possible for a senator, in the closing year of his term, to be twelve years distant from the action of the voters. Hence there are frequent protests that the Senate, in mental attitude, is a decade behind the times and has disclosed this hiatus by its traditional indifference to social democratic reforms.

Proposals for its reform.

Many projects for reconstructing the French Senate have been put forward during the past forty years, but no tangible results have come from any of them. The Senate, of course, does not want to be reformed, and there is no way of reforming it against its own will. No change can be made in the organic law of 1884 without its concurrence, and French senators are like all other legislators in their disinclination to be thrown out of office. Moreover, it is much easier to pick flaws in the present organization of the Senate than to procure any general agreement upon a substitute. If the reformers could unite on a definite plan of reorganization there would be some hope of its ultimate adoption despite the Senate's opposition, for a second chamber will always bend to the will of the nation when that will is clearly made manifest. Both the House of Lords and the Senate of the United States have done this during the past twenty years. But in France the proponents of senatorial reform have not been able to get together upon any definite reorganization project. There are almost as many plans of reform as there are reformers. Amid the babel of squeaky voices assailing it, the Senate goes placidly on. Editorial writers in the radical newspapers keep whining that it is "a brake on the wheels of progress," quite unmindful of what this overworked metaphor implies, for a brake on the wheels is what makes all the difference between a vehicle and a juggernaut.

The Senate's meeting place.

The Senate and the Chamber of Deputies ordinarily meet at the same time, and their sessions come to an end simultaneously. The Chamber is never called into session alone; but the Senate may be

summoned in special session by itself for the purpose of hearing an impeachment. In Great Britain and the United States the two legislative chambers meet under the same roof; but this is not the practice in France. The French Senate holds its sessions in the Luxembourg Palace, a structure which is redolent of Napoleonic memories.¹ It has many magnificent rooms and corridors, richly decorated with tapestries and with carvings in wood. The Senate chamber is in the form of an amphitheatre, with eight rows of arm chairs, upholstered in red velvet, rising tier on tier. Directly in front of them is the tribune from which the senators (or the ministers when they are present) make their speeches. Behind the tribune sits the president of the Senate, with various officials on either hand, while grouped around them are splendid marble statues of the great chancellors who laid down the law in olden days,—Turgot, D'Aguesseau, Colbert, and the rest. On the lawmakers of a modern republic these faces of stone look down.

The Senate elects its own president, and this official ranks next to the President of the Republic among the officials of state. He has the usual powers of a presiding officer, including disciplinary powers; but these he has no occasion to use, for the Senate is an exceedingly well-behaved body. Its decorum is almost oppressive. Instead of a gavel the president uses a bell which tinkles melodiously at each stage in the advance of business. The Senate also elects, from among its own members, a vice president and a committee of management which performs various functions especially in arranging the order of business. The debates are rather technical and tiresome; they lack the vivacity that marks the discussions in the lower House. The Paris newspapers pay relatively little attention to them. Nevertheless most of the speeches in the Senate are well prepared and carefully thought out. They read well in print and many of them have permanent value. Senators of France are paid for their services and have the usual immunities of legislators,—freedom from arrest and freedom of speech—subject to the customary limitations.

Its presiding officer.

¹ This mansion, which is situated in the Rue de Baugirard, at the end of the Rue de Tournon, was built during the early years of the seventeenth century for Marie de Medicis, and was considerably remodelled by Napoleon I. During the period of the Red Terror it was used as a prison. It served as a legislative chamber during the First and Second Empires. The Senate of the Third Republic has used it since 1879.

General powers of the Senate: (a) as originally intended.

It was the intention of those who framed the French constitutional laws that the Senate should be at least co-equal with the Chamber of Deputies in authority and influence. The conservatives in the national assembly cherished the hope, in fact, that the Senate would be the more powerful of the two chambers. So far as the express provisions of the constitution go, there is no reason why it should not be, for the constitution makes the ministers responsible to both chambers. It gives the Senate an equal share with the Chamber of Deputies in the making of all laws, with the single exception of money bills which must originate in the lower House. And it gives the Senate two special powers which in 1875 were deemed to be of great importance, namely, the power to serve as a high court of impeachment, and the power to join with the President of the Republic in ordering a dissolution of the Chamber of Deputies. The French constitution does not, however, give the Senate any special authority in relation to treaties and presidential appointments such as is possessed by the Senate of the United States.

(b) as they have actually worked out.

But the expectations of those who planned the powers of the French Senate have not been fulfilled. It has become distinctly the less influential of the two chambers. This is partly because all previous upper chambers in France had occupied a subordinate position, and a tradition of inferiority had thus become established. It is also because the Chamber of Deputies, with its members chosen for short terms by direct manhood suffrage, has assumed itself to be more truly representative of the people and has arrogated powers on that assumption. It has taken control of the ministry and control of the budget, although the constitution does not give it control of either. The Chamber of Deputies has quietly gathered this authority under its wing, just as the Supreme Court of the United States has taken to itself the right to declare the laws unconstitutional. All of which merely supplies another illustration of the axiom that the wording of a constitution affords no clue to the facts of government. The subordinate position of the French Senate is the outcome of usage, not of law.

The Senate's special prerogatives:

What are the powers which the French Senate now exercises? Let us begin with its special prerogatives. The right to join with the President of the Republic in dissolving the Chamber of Deputies is the first of these. It is a unique function of an upper chamber. In Great Britain the House of Commons may be dissolved at any

time by the crown on the advice of the cabinet; in the United States the House of Representatives may not be dissolved by anyone under any circumstances. But the French constitution expressly stipulates that the President of the Republic may dissolve the Chamber if the Senate concurs. This was thought by the framers of the constitution to be a power of supreme importance. Among other merits it was believed to be useful as a safeguard against a possible coup d'état by some ambitious chief of state.

1. Consenting to a dissolution of the Chamber.

But the Senate's power to join with the President in dissolving the Chamber of Deputies has turned out to be a prerogative of very little consequence. The reason for this indicates that the makers of the French constitution did not clearly envisage the actual workings of the government which they were setting up. They provided that every official act of the president must be countersigned by a responsible minister. That meant, of course, that a decree dissolving the Chamber of Deputies, like any other presidential decree, would have to be so countersigned. In other words it is the ministers, not the President of the Republic, who must take the initiative in asking the Senate to concur in a proposal of dissolution. But it stands to reason that no ministry will ever propose a dissolution of the lower chamber so long as it retains the support of a majority in that body.

Why this prerogative is of no importance.

So, what the framers of the constitution really did was to give the ministry, with the concurrence of the Senate, an opportunity to dissolve the Chamber whenever the latter showed itself hostile. If actually put into operation, that arrangement would be intolerable. It would lead to dissolutions and general elections every few months, because ministries are rarely able to keep control of a majority in the Chamber of Deputies very long. Usage has therefore decreed that the power of dissolution shall not be put into practice at all. Only once in fifty years has the Chamber of Deputies been dissolved before the expiry of its four-year term, and the outcome in that case was not such as to encourage any repetition of the experiment.¹

The second special prerogative of the Senate is that of serving as a "high court of justice for the trial of the President of the Republic, or the ministers, or to take cognizance of assaults on the security of the state." According to the constitution the president may be impeached for high treason only, but a member of the

2. Serving as a court of impeachment.

¹ See above, p. 403.

ministry may be haled before the Senate for any offense committed in the exercise of his official functions. For assaults on the security of the state the Senate may try any person whatsoever, whether he be a public official or not.¹ In such cases a presidential decree convokes the Senate into session as a high court of justice.

Procedure
in impeach-
ments.

The first step in an impeachment is ordinarily taken by the Chamber of Deputies which frames the charges. But in the case of assaults upon the security of the state, the accusation is not made by the Chamber but by the ministry. On three important occasions within the last fifty years the ministry has brought such accusations against men of prominence in French public life, the most recent instance being that of Joseph Caillaux in 1920.² A bare majority in the French Senate is sufficient to convict, whereas in the Senate of the United States a two-thirds majority is required.

The Sen-
ate's share
in lawmak-
ing:

1. Money
bills.

So much for the Senate's special and exclusive powers. It has been mentioned that the lawmaking authority of the French Senate is ostensibly co-equal with that of the Chamber of Deputies save in one respect, namely, that money bills must be first presented to the lower House, and passed by it before going to the Senate. Whether the Senate may amend such bills by increasing or decreasing the items at its discretion the constitution does not say. It simply provides that "money bills shall be first introduced in, and passed by, the Chamber of Deputies."

Offset by
usage.

But here again usage has made the silence of the constitution articulate. The matter was for a time in doubt and gave rise to repeated controversies between the two chambers, but in the end the Chamber of Deputies triumphed and its right to have the final word on all money matters is now virtually conceded. The Senate, however, continues to offer amendments when money bills come before it. It cannot insert new items and it can increase items only upon the proposal of a minister. Hence its amendments are restricted to decreasing or striking out items which are already in the bill. If the deputies agree to such amendments when the measure goes back to them, well and good. But if they do not agree, the Senate gives way. This, as a prominent senator once ex-

¹ This, it will be noted, is a wider power than is possessed by the Senate of the United States.

² Caillaux, a former prime minister, was accused of intrigues with the Germans during the war. He was convicted and sentenced to three years' imprisonment in addition to the loss of all political rights for ten years. But in 1924 his civil rights were restored to him by legislative enactment and in 1925 he became minister of finance in the Painlevé cabinet.

plained, is a "matter of expediency, not of law." But whether it be a matter of willingness or compulsion the effect is all the same. The Chamber of Deputies in France, like the House of Commons in Great Britain, has gained a virtually absolute control of the national purse.

Strangely enough the House of Representatives in the United States does not have this financial supremacy although such was the avowed design of the men who framed the constitution.¹ They intended that the lower branch of Congress should be the dominant factor in public finance. James Madison, indeed, predicted that the provision which confers on the House of Representatives the sole right to originate bills for raising revenue would unquestionably make it so. But Madison proved to be a false prophet. The Senate of the United States has developed greater influence than the House, not only in matters of general legislation but in the making of the tax laws. By the terms of the constitution it cannot originate bills for raising revenue, and by usage it cannot originate bills for the spending of money; but when a bill of either sort comes up from the House it can strike out everything except the preamble and substitute what is practically a new measure of its own. The Senate of France has acquired no such authority.

An American contrast.

On all measures other than money bills the equal authority of the French Senate has never been seriously questioned. Such bills may be originated in the Senate, but most of them are in fact first brought before the Chamber of Deputies. If they pass this chamber they go to the Senate where they may be rejected or amended at will. When the two chambers disagree on amendments the bill is not sent at once to a conference committee as is the practice in Congress. It merely travels back and forth from one chamber to the other. Meanwhile the leaders confer and try to reach a compromise. Sometimes each chamber appoints a committee to help effect an agreement, and these committees may confer, but they make no joint report as in Congress. If the measure is one that has been sponsored by the ministers, it is their concern to find a solution of the deadlock and they try to do it by wheeling their respective followers into line. But after all the conferences and pourparlers, if the Senate decides to stand its ground, the

2. Other bills.

¹ "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." Constitution of the United States, Article I, Section 7, Paragraph 1.

measure fails to become a law. A good many bills have perished in this way.

The Senate's methods of resistance.

"The function of the Senate is to resist," says Barthélemy, "and in its own way it fulfils this function." But rarely does it carry its resistance to the point of open rupture. It prefers to interpose the barrier of inertia. Hence, when some measure has been hurried through the Chamber of Deputies without adequate discussion, the Senate merely refers it to a committee and there it stays until public opinion can be sounded. Other problems then engage the interest of the deputies, and the measures which repose in the files of Senate committees are sometimes forgotten. In any event the original ardor of the deputies has time to cool down, and compromise then becomes more easy.

How it checkmates the practice of "tacking."

The Chamber of Deputies, on some occasions, has taken a money bill, and tacked some non-financial reform to it in order that the Senate may be debarred from rejecting the latter. But this parliamentary subterfuge has not usually succeeded. The Senate merely separates the irrelevant provision from the main bill and sends it to a committee for study. It does this at times with proposals of fiscal reform which are included in the budget—taking the ground that the budget must be passed speedily but that other reforms can wait.

The Senate as an agency.

There is no way in which the Chamber of Deputies can force the Senate to expedite the work of its committees, and these dilatory tactics sometimes place the ministers in an awkward position. The Chamber insists that the ministers bend their efforts toward securing the Senate's approval of some reform, yet the ministers are well aware that any attempt on their part to put pressure on the slow-moving senators would probably do more harm than good. For the Senate is very jealous of its independence and resents any attempt to force its hands. Moreover, most of the senators are seasoned parliamentarians who have been members of the Chamber and understand its impatient ways. They know that the Chamber, in its inclination to play politics, often favors radical measures with the full expectation that the Senate will throw them out. In such cases the senators do the job with neatness and despatch. Sometimes they go further and guillotine bills which the Chamber really intended to become laws.

Its attitude on taxation.

In general the Senate has been hostile to new forms of taxation. For years it stood out against the imposition of an income tax. It

has resisted proposals which aim to put the bulk of the tax burden upon the rich—by heavy inheritance taxes, for example. It has usually delayed all such measures or tried to whittle down the rates. In 1925 it promptly rebuffed the Herriot ministry when the latter came forward with proposals for what was virtually a "capital levy." As one writer puts it, the Senate has displayed an undisguised antagonism to "systems of taxation with democratic tendencies." It cannot increase the rates of taxation proposed by the Chamber, and does not want to do so; but it can reduce them, and it wields the pruning knife with a good deal of zest.

The French Senate has also been hostile to proposals of government ownership. It has been against state socialism, although there is a large Socialist element among its members. It was only with the utmost reluctance that it accepted a measure for the public acquisition of one of the French railroads,—*les chemins de fer de l'Ouest*. It has delayed various bills relating to additional holidays for public employees, pensions for workers, the improvement of election procedure, and social welfare work. For some of these delays, however, the Chamber of Deputies was in part responsible in as much as the bills sent up by it were badly drawn.

Its aversion to socialism.

Whenever the Senate rejects one of these measures there is a furore of resentment from the radicals and a renewed demand for the Senate's abolition. But after a little the wave of antagonism subsides. The average Frenchman wears his heart on the Left and his pocket on the Right. His sympathies are often with the radicals while his interests are with the conservatives. That being the case the Chamber and the Senate, although flatly at issue with each other, both represent him exactly. The Chamber is his Don Quixote, the Senate his Sancho Panza. Frenchmen, moreover, have retentive political memories. They do not forget that the Senate on one occasion saved the Republic—in 1888, when Boulanger tried to stampede the ministers into dissolving the Chamber. At this critical juncture the senators let it be known that they would refuse concurrence. Instead they presently put Boulanger on trial and found him guilty of treason.¹

Its work has been useful.

Nearer than any other European legislative body, in short, the Senate of France approaches the ideal of what a second chamber ought to be. The prime purpose of an upper chamber is to serve as a counterpoise to the haste and volatility of a popular chamber.

¹ For the history of the Boulanger agitation, see *below*, pp. 493-495.

It should revise, suggest, find fault,—and delay when necessary. It should interpose obstacles, but not insuperable ones, to the fevered impatience of the lower House. To this end a second chamber should be constituted differently, but not too differently, from the other branch of the lawmaking body. The difference must not be so great that strong currents of public sentiment will affect one house and leave the other unaffected. An ideal second chamber should bend slowly to the gusts of public opinion, but it should never fail to bend when the wind sets definitely in a given direction. For if it does not bend it is apt to break—as the House of Lords discovered in 1911. Judged by this test the French Senate makes a good showing. It has been a stabilizing factor in a country where political instability is a besetting menace. It has provided the Third Republic with a good balance wheel.

An excellent survey of the Senate's organization and work may be found in A. Esmein, *Droit constitutionnel française* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 333–478. Attention may also be called to Joseph Barthélemy, *Le gouvernement de la France* (2nd edition, Paris, 1924), chap. v. There is an English translation of the first edition by J. B. Morris (New York, 1924). The same author's volume on *Les résistances du Sénat* (Paris, 1913) is interesting. See also E. M. Sait, *Government and Politics of France* (New York, 1920), chap. v.

CHAPTER XXIV

THE CHAMBER OF DEPUTIES

Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous.—*A. Lawrence Lowell.*

As the essence of the French nation is social rather than political, an outsider will often mistake a rowdy parliamentary session for a serious national crisis.—*André Siegfried.*

In the constitutional laws of 1875 there is a great deal about the composition and powers of the Senate, but scarcely a word concerning the Chamber of Deputies. Save for the provision that its members shall be elected by "universal suffrage" the organization of the Chamber was left to be determined by ordinary legislation.¹ There were two reasons for this action. In the first place no difference of opinion existed in the national assembly as to how the Chamber should be organized, nor indeed was there any difference of opinion on this matter in the minds of the French people. Everybody assumed that the lower branch of the legislature would be made up of members directly elected by the whole people. That being the case it did not seem to matter very much whether the election took place under one form of procedure or another. In the second place, it was felt that much might be gained by leaving the organization of the Chamber flexible. The size of its membership, the term of service, the procedure in elections, and the rules of the Chamber—these were matters which might well need to be altered to meet new conditions from time to time. Before it dissolved, however, the national assembly adopted an organic law (November 30, 1875) in which the method of electing deputies was definitely prescribed. The provisions of this organic law have been altered by statute on a half-dozen occasions since 1875.

As at present constituted, the Chamber of Deputies consists of 612 members.² It is, therefore, the second largest elective chamber

Why the constitutional laws do not deal with the Chamber.

The method of electing deputies.

¹ The term "universal suffrage" has been interpreted in France to mean manhood suffrage.

² Of these 4 are allotted to certain French colonies, 10 to Algeria, 26 to Alsace-Lorraine, and the rest to France as she was before the war.

The suffrage.

in the world. The deputies are chosen for a four-year term on a basis of manhood suffrage. The right to vote extends to every male citizen of France, twenty-one years of age or over, who has been duly enrolled on the voters' list of any commune. To be enrolled in a commune it is necessary to possess a "true domicile" there, or to have been a resident for at least six months prior to the compilation of the voters' list. The laws make a distinction between domicile and residence. It is possible for a citizen to reside in one commune while retaining his "true domicile" somewhere else—usually in the commune of his birth. Persons in the active military or naval service and those who have been deprived of civil rights by judicial decree are excluded from voting. There are no educational tests for voters in France as in some of the American states, and no taxpaying requirements. There is no plural voting as in England, no absent voting as in America, and no compulsory voting as in Belgium.

No woman suffrage.

Women are still excluded from voting in all French elections although an attempt was made in 1919 to give them suffrage rights. The Chamber of Deputies, in that year, passed by a large majority a bill to abolish the sex qualification, but the Senate by an equally decisive vote rejected the proposal. And, strange to say, it was not the conservatives, but the radicals and socialists who encompassed the defeat of the measure. For the Left bloc is well aware that the women of France are friendly to the Catholic Church and would not support the policy of anti-clericalism which the French socialists have been promoting during the past thirty years. So democracy, as one very keen-witted Frenchman has ironically remarked, "must be protected against itself, for what good is democracy unless it helps its own friends?" One is reminded of the legendary Ugolino who devoured his own children so that they would never be fatherless.

At any rate France did not become worked up over the issue of woman suffrage. It did not show much enthusiasm when the Chamber acted favorably, or much disappointment when the Senate acted adversely. Both Houses did what most people expected them to do. Since 1919 the issue has been kept alive by various women's organizations, but it is not one of the major issues in French politics. Women undoubtedly will some day be enfranchised as voters in France, as they have been elsewhere, but that step does not appear to be immediately at hand.

During recent years there has been much discussion of a proposal for "family voting" in France. In brief the father of a family, under this proposal, would be given one or more extra votes, depending upon the number of his children. Concerning the details of such a plan there is much difference of opinion, and a half-dozen schemes have been worked out. Difficulties arise with respect to the electoral status of widows who are heads of families, and as to the position of unmarried daughters who are over age. What provision should be made for them in a system of family voting? The general argument in favor of *le vote familial* is that the family, not the individual, is the true unit in the social organization and that representative bodies chosen by a system of family voting will represent the people in terms of this true unit. On the other hand, the proposal is open to various objections of a practical sort.

The proposal for "family voting."

Although the qualifications for voting are fixed by general law and hence are the same at all French elections—national, departmental and local—the work of compiling the voters' lists is entrusted to the local authorities. In each commune the responsibility for preparing the *liste électorale* rests with a commission of three persons, namely, the mayor, a representative of the municipal council, and an official named by the prefect of the department in which the commune is situated. This commission first revises the old register by using information which is on file at the mairie or city hall.¹ Then the revised list is posted and if there are any wrongful omissions or inclusions, the interested parties may file protests. Such protests are considered by the electoral commission whose membership is enlarged for this purpose by adding two additional representatives of the municipal council. And if the decisions of this enlarged commission do not satisfy, there is an appeal to the administrative courts.

How voters' lists are compiled.

Apart from errors or oversight the names of voters are placed upon the list without any action on their own part. There is nothing corresponding to the English method of sending canvassers from house to house gathering the names of voters, or the American plan of calling on the voters to come and get themselves registered. There is no occasion to use either of these methods because all the essential information is on file in the office of the mayor. The records of the *état civil* contain the names of all who have moved

The *état civil* as a basis.

¹ A perpetual census or *état civil* is maintained in every commune as a basis for the *état militaire* or roster of compulsory military service.

into the commune during the year, or out of it. They also list the inhabitants who have died, or who have come of age, or who have lost their civil rights since the list was last revised. Owing to the accuracy of these records there are relatively few wrongful omissions or inclusions to be found when the list is posted.

The election districts.

France has tried, since 1875, various methods of electing deputies. During the first ten years the elections were based upon single-member districts, as in England and the United States. But this plan, to which the French gave the name *scrutin d'arrondissement*, was deemed unsatisfactory because it seemed to concentrate the attention of each deputy upon the interests of his own district rather than upon those of France as a whole. The districts were small, and it is an axiom of government that small districts elect small men. As Gambetta once said, it made the Chamber of Deputies "a broken mirror in which France could not recognize her own image."

The change to a general ticket system and back again.

So a plan of election by general ticket, or *scrutin de liste*, was adopted in 1885. Under this system the voters of each department (a department is the largest administrative district in France) chose four, or six, or ten deputies according to its population. But the plan of election-at-large also failed to satisfy. It failed to provide minority representation and did not produce any noticeable improvement in the quality of the men elected. Moreover, it was utilized by the Boulangists with such success in promoting their agitation that both chambers became alarmed. In 1889, therefore, the old method of election by single-member districts was restored.

Objections to the district plan.

Once more there was widespread grumbling. It was alleged that the ministers and the prefects, by the free use of patronage, were able to control the elections in many of the smaller districts. As the districts, moreover, were usually identical in size with the *arrondissements* there was great inequality among them; some had twice as many voters as others. Finally there was the objection that deputies elected by the plan of *scrutin d'arrondissement* did not usually represent a majority of the voters in their districts. This arose from the fact that there were always several candidates in the field. The electoral law stipulated that no candidate should be deemed elected at the regular election unless he obtained a clear majority of the votes cast, but it also provided that if no one secured a majority at this first balloting there should be a second election, a fortnight later, at which a plurality would suffice. Under

this plan the first balloting usually proved abortive. Thereupon a deal would be made among the weaker candidates to combine and defeat the one who had headed the poll previously.

In their desire to provide a system of election which would remedy these defects the two chambers discussed the problem from time to time for many years, but not until 1919 were they able to agree upon a new plan. In that year a new electoral law was passed which reestablished the plan of *scrutin de liste* but with the counting of votes according to proportional representation. Under this "List Plan" of arrangement each political party was to nominate its list of deputies for the whole department. Then, in counting the ballots, the votes received by candidates on each list were to be averaged, and this average, divided by the electoral quota, was to determine how many seats each political party should have. The electoral quota was to be ascertained by dividing the total polled vote by the number of deputies to be elected.¹

The movement for proportional representation and its outcome in 1919.

This arrangement, which did not provide a true system of proportional representation but a *r.p. bâtarde*, to use the French expression, was used at the general elections of 1920 and 1924. It was really concocted by the enemies of the plan and was a compromise which satisfied nobody. In actual operation it functioned badly. In general it gave the stronger parties more than their proportionate representation and the weaker parties no representation at all. Hence there arose a clamor for its abolition and in 1927 the old system of *scrutin d'arrondissement*, or election by small single-member districts, was once more restored. Thus the French people, after fifty years of experimenting, have come back to the plan of election from which England and America have never departed.

Soon abandoned.

Any French citizen, twenty-five years of age or over, is eligible to be a candidate for deputy. The nomination procedure is simple. There are no primaries as in the United States. Each candidate is merely required to file a nomination paper. It is not necessary to deposit any sum of money, as in England. The ballots are printed by the parties or by the candidates, not by the election officials (as in England and the United States). Each candidate is permitted to send out sample ballots to all the voters in his district and these go through the mails free of postage. He is also allowed to enclose,

How nominations are made.

The ballot.

¹ A further explanation and criticism of this plan may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), pp. 107-108.

with the ballot, a limited amount of campaign literature. Likewise he may put posters on the public billboards without paying the customary fees.

The election.

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The election takes place on a date fixed by presidential decree, but it must come within sixty days preceding the expiry of the four years for which the Chamber was elected. It always takes place on a Sunday. This is in keeping with the equalitarian principle, it being assumed that Sunday is the most convenient voting-day for everyone, wage-earner and gentleman of leisure alike. It also affords (what Frenchmen value highly) a fine chance to hang around the polling place most of the day, arguing about the issues, the candidates, and the probable outcome.

Advantages of Sunday elections.

Indeed, the advantages of holding elections on Sundays, rather than on week days, are so manifest as to raise the question whether Americans might not profitably follow the Continental practice. The most convenient places for polling are the schools, and the American practice of using them for Tuesday elections is responsible for a needless interruption of school work. If one reckons the entire indirect cost of an American election, allowing for the time taken from their work by all the voters (even though it might average less than an hour apiece), the total is far beyond what most people realize. An election day in any American city means that industrial production is reduced by at least ten per cent. Holding the election on a Sunday would eliminate this needless economic loss. It would allow the schoolrooms to be used without any interruption of their regular work. It would permit competent men to be secured as polling officers whereas most of them now dislike to take the day from their regular employments. And above all it would give every voter exactly the same opportunity to cast his ballot, establishing an equality which now exists in theory but not always in fact.

Would they do in America?

There would be objections to such a proposal, of course. To some puritanical souls the holding of an election on Sunday would seem to be Sabbath desecration, the profanation of a day which ought to be reserved for religious exercises. But would it be a greater profanation than the professional ball games, the motion picture shows, or the bathing-beach spectacles which now attract citizens by the thousand every Sunday afternoon in many American cities when the weather is good. There seems to be no objection to the holding of political rallies on Sunday, and political deliver-

ances are sometimes thundered from the church pulpits. If voting is a "sacred duty" on the part of every citizen (as we are so often told by the professional rousers of the civic conscience), why object to its performance on a day that is consecrated to sacred things? The better the day, the better the deed.

The polling places are designated by the prefects and sub-prefects (see pp. 556-561). Schoolhouses and other public buildings are generally used. A few days prior to the election a notice (*carte électorale*) is mailed to every voter whose name is on the list informing him of the place and date of polling. On entering the polling room the voter presents this card, which identifies him. If he has lost or forgotten to bring it he can establish his identity in any other way that is satisfactory to the officials of the poll. Then he is given an opaque, white envelope with which he retires into a screened compartment (*isoloir*) where he puts his ballot into the envelope, seals it up, and then drops the sealed envelope in the ballot box.

Polling
places.

In the villages and small towns, where there is only one polling place, the mayor acts as chief election officer, attended by four members of the municipal council who serve as his assistants. These five constitute the bureau of the poll and by a majority vote decide all questions that may arise. There is also a poll clerk, or secretary, who is appointed by the mayor, but he is not a member of the bureau. In the larger cities, where there are several polling places, the mayor presides at one of them and designates various councillors to preside at the others. A bureau is similarly constituted for each polling place. All these officials give their services free—which is in sharp contrast with the American custom. In the United States everybody who serves in a polling place expects to be paid, and well paid. By reason of this unpaid service a general election in France costs astonishingly little.

Polling offi-
cials.

Voting begins at eight in the morning and continues until six in the evening, unless different hours are fixed by the prefect. Any voter, after he has voted, is permitted to stay in the polling room as long as he desires. Hence the room is often so crowded that the members of the polling bureau have difficulty in doing their work. The air is dense with tobacco smoke, through which can be discerned a general shrugging of shoulders and waving of hands as spirited arguments are conducted by the groups of partisans. Occasionally the arguments grow so warm that the presiding officer

The polling
hours.

of the poll calls in a gendarme and instructs him to clear the room; but this must not be done unless the commotion makes it necessary. Frenchmen look upon the polls as places of public meeting, where the voter settles the issues in person. They see no reason why the proceedings should be conducted in executive session. Hence an election can be voided if the polling officials unnecessarily interfere with the voter's inalienable right to discuss the destinies of the nation, with all the accompanying pantomime, in full view of the ballot box.

Counting
the votes.

When the poll is closed the ballots are counted by members of the polling bureau. But if a large vote has been cast the officials may call upon bystanders for aid, and this they frequently do. The room is as crowded as ever, even more so, and the counting usually proceeds with some difficulty. Any outsider who has seen it will marvel that any approach to accuracy can be obtained in the result. Yet the count is, on the whole, more accurate than in American polling places where a policeman keeps everybody except the officials out of range while the count is being made.

The ballot-
age.

In order to be elected, a candidate must receive a clear majority of all the polled votes. If no one meets this requirement a *ballotage*, or supplementary election, is held on the second Sunday following and at this election a plurality is sufficient. Thus the plan works out pretty much as under the usual American scheme of primaries and final elections, with this difference, however, that the two pollings in France are only a fortnight (not a couple of months) apart.

Disputed
elections.

If disputes arise concerning the results of an election, they are decided by the Chamber under the constitutional provision which empowers it to determine the qualifications of its own members. Controversies are referred to committees, but the recommendations of these committees are not always accepted by the whole Chamber. The latter's action is largely influenced by partisan considerations. Protests may be filed on grounds of intimidation, bribery, or corruption, and if the Chamber upholds these protests it will annul the election. Then a new election is ordered. But the Chamber cannot impose any other penalty upon candidates who have been guilty of electoral corruption. They may, however, be prosecuted in the courts.

Election ex-
penditures.

There is no law which limits the amount which a candidate may legitimately spend in getting himself elected to the French Cham-

ber of Deputies. So long as he does not spend it corruptly he may pay out as much as he likes and is not required to publish a statement of his expenditures. In England and in the United States there are stringent laws relating to maximum political expenditures, but in France there are no limitations of this sort. Nor does there seem to be need for any, since public opinion usually provides an adequate check. An outpouring of money on behalf of any candidate, or group of candidates, is likely to prove a boomerang in France for the people are not accustomed to it and resent the innovation. It offends their tradition of equality. A few candidates can afford to spend large sums and occasionally they do it in "nursing their districts" but the amounts expended by candidates for election to the Chamber of Deputies are much smaller, on the average, than those spent in American congressional campaigns.

On the whole the elections are honestly and fairly conducted in France. Election frauds are not frequent, although some gross instances have been uncovered from time to time. Moreover, the offense of tampering with the ballot box, a party stratagem well known to Americans of a generation ago, has not yet disappeared in France. Lord Bryce tells a story of one polling place in which, as the hour for closing approached, it was found that only a small vote had been cast. The mayor of the commune, on being informed of this, said in a cryptic whisper to the polling officials: "It is your duty to complete the work of universal suffrage,"—and presumably they obeyed orders. Sometimes, in a hotly-contested election, the rival partisans have invaded the polling place and engaged in a fist-fight during which the ballot box was smashed open and the ballots scattered to the four winds of heaven.

Absence of
electoral
frauds.

Minor forms of corruption prevail in French elections as in those of all other countries where party feeling runs high. The neighboring cabarets do a good business on election day, and politicians sometimes foot the bills. Employers are said to be over-zealous at times in persuading their workers, and in some rural districts it is alleged that the landlords bring pressure to bear on their tenants. A generation ago it was said that the priests in many parts of France were exercising too much political influence over their parishioners, but to-day this complaint is seldom heard. Pressure now comes chiefly from the prefect, the subprefect, and the other public functionaries. Some of these officials are quite obtrusive in their efforts to secure the election of deputies who will support the

Putting
pressure on
the electo-
rate.

ministry. A ministry which is in power when the election comes has a great advantage over its opponents by reason of the influence which it can persuade its public officials to exert. Even in this respect, however, conditions are much better than they used to be. With changes in ministries likely to occur at frequent intervals the prefects hesitate to commit themselves unreservedly to the ruling bloc. For although they cannot be summarily dismissed they can be given a demotion by transfer if they tie their fortunes to a falling star.

The Chamber's sessions.

The Chamber of Deputies meets each year on a date fixed by the constitution. It is not called together at the discretion of the ministry as is the British House of Commons. But in case of an emergency the President of the Republic may call it together at an earlier date than that fixed by the constitution. Two sessions a year are held, one beginning in January and lasting until July; the other beginning in November and continuing until January. With the exception of about three months, therefore, the Chamber is continually in session. The daily sittings begin at two o'clock in the afternoon and last until six or seven. When the urgency of business requires longer daily sittings the Chamber meets earlier in the day. It rarely prolongs its sessions into the night. Since 1879 the sessions have been held in the Palais Bourbon, a stately building with a Corinthian peristyle which stands on the left bank of the Seine directly across from the Place de la Concorde.

Arrangement of seats.

The hall in which the deputies hold their sessions is semicircular in shape with a dozen rows of seats. Each seat except those in the front row has a small desk hinged to the seat in front of it. The front row is reserved for ministers, undersecretaries, and other executive officers who are present in connection with the business of the day. Behind them the rows of seats are elevated like those of an amphitheatre. Facing the semicircle is a high chair in which the president of the Chamber sits, and in front of this, on a somewhat lower level, is the tribune from which the members address the House.

The tribune.

A deputy is allowed to speak from his place on the floor if he so desires, but as a rule he merely obtains recognition from the floor and then mounts the tribune where he can face his entire audience. This method of conducting the debates is in many of its practical aspects quite superior to the plan pursued in the English House of Commons and in the American House of Representatives for it

ensures every member a chance to hear what is being said. There is no breaking in upon deputies while they are speaking, asking them to "yield the floor" as in Congress. On the other hand interruptions in the way of shouts and ironical cheers from some sector of the amphitheatre are not infrequent. It should be explained that the seats are assigned in sectors to the various political groups, the conservatives being given the extreme right and the communists the extreme left, with the moderate groups between. There are galleries to which outsiders are admitted except on days when the Chamber decides to meet in secret session.

Interrup-
tions.

The constitutional laws of 1875 contain the curious provision that both the Chamber of Deputies and the Senate must remain in session for at least five months in every year, even if there is no business for them to do. But this provision has not given rise to any embarrassment because there has always been enough work to keep both Houses busy for an even longer period. Anyhow the chambers could adjourn if need be and the recess would be counted in reckoning the five months. The President of the Republic may adjourn both chambers for a period not exceeding one month, subject to the restriction that he must not do this more than twice during the same session. When the two chambers have been sitting for five months he may bring their sessions to an end by a decree at any time. Finally he may dissolve the Chamber of Deputies with the consent of the Senate; but this power has not been used since the famous *Seize Mai* in 1877.

Adjourn-
ments and
proroga-
tions.

As for the men who make up the Chamber of Deputies there is a general impression that they do not average up to the standards of the British House of Commons or the American House of Representatives. It is difficult to tell how much real basis for this impression there may be, because the quality of the men who sit in legislative bodies is something that does not lend itself to statistical computation. There are no yardsticks wherewith to measure legislative capacity. It is all a matter of individual judgment colored by patriotism or the lack of it. One may doubt, however, that the general impression is well founded in this case, although it is quite true that the practice of electing deputies from relatively small districts has tended to fill the Chamber with local politicians. It has helped to lower the position of deputy to that of a patronage-seeker for his own district. His mandate to Paris is less that of a lawmaker than that of a village ambassador. Hence a large portion

Personnel of
the Cham-
ber.

of his time must be spent in finding jobs for the pay-roll patriots of his *arrondissement*, visiting the prefecture in quest of favors, and serving as a messenger for everybody who has official business at the capital.

The impression of mediocrity may be due, in part, to the fact that the French people are themselves rather vigorous critics of their own parliamentarians. And certain it is that to an outsider the deputies do not look impressive. Many of them dress slouchily and look unkempt. This is true even of some who are men of world-wide reputation, such as Briand and Painlevé. The average deputy goes home every Friday evening and gets back to Paris on Tuesday with a clean collar and a new grist of errands for his constituents. Incidentally he travels free on the railroads, which is why he goes home so often. The decentralization of parties in France may also have had an influence upon the quality of the men elected to the Chamber. It has given a great advantage to the candidate who can intrigue and form alliances, whose political principles are not firmly fixed, and who is willing to compromise in order to secure votes. But in the last analysis it may be questioned whether the French Chamber of Deputies is inferior in intellect to either the House of Commons or the House of Representatives, and certainly it maintains as high a standard of official honesty.

His Majesty, the deputy.

The deputy is the pivotal figure in contemporary French government. He is local leader and boss combined. He is looked upon as the real sovereign of France, says Siegfried, "by the millions of nobodies who make up the French nation."¹ And often he acts the part. The deputy's attitude toward the ministers, or even toward the President of the Republic, is not one of studied deference as is the corresponding relation in England and America. President and ministers may be the government of France, but the deputy is the people of France. *L'État c'est moi*—if he doesn't say it, he often thinks it.

Vocations in the Chamber.

The Chamber of Deputies is unlike the House of Commons in that very few of its members come from families allied with the old nobility. It contains no considerable element analogous to the English squires or country gentlemen. There are many large landowners in France, especially in the western part of the country; but few ever get themselves elected. Unlike the American House of Representatives, moreover, the Chamber of Deputies

¹ André Siegfried, *France—A Study in Nationality* (New Haven, 1930), p. 107.

does not contain a large number of men who directly represent the interests of agriculture, industry, and commerce. It includes relatively few men who have ever worked with their hands. The largest element is made up of professional men,—lawyers, physicians, journalists, retired public officials, educators—and always a good many professional politicians.

Frenchmen complain that there has been a steady decline in the standards of ability, independence, and intelligence among their lawmakers during the past fifty years. In that they are not unique, for one hears the same complaint in England and America. They grumble that there are no Thiers, Ferrys, Gambettas, or Waldeck-Rousseaus in the Chamber of Deputies to-day, just as Englishmen lament the absence of Disraelis and Gladstones in the House of Commons, while Americans seek in vain for Websters and Clays among contemporary congressmen. The trouble is that everywhere the world idealizes the men of the past and exalts them to a pedestal on which their contemporaries would not have placed them. A legislative body often gives an impression of mediocrity for the mere reason that the times give it nothing heroic to do.

Has the standard declined?

One senses a strong bourgeois flavor in the French Chamber. A bourgeois in France is a man who has saved some money—but not too much. The bourgeois deputy gets himself a modest room in some section of Paris where the American tourist has not yet stimulated the landlords to higher rentals. He shies at silk hats and dinner jackets, rides to the day's business on the underground or on a bus, gets his meals *en pension*, and votes against proposals to raise taxes. Being a French deputy gives a man no such social standing among his own people as that which attaches to membership in the House of Commons. An English M.P., if he be reasonably presentable, has an assured social entrée if he wants it. The increase of Labor strength in the House of Commons has changed this situation somewhat, but the number of members whose social status is unquestioned still continues to be large at Westminster. On the other hand the French Chamber contains a greater number of men who possess the ability to speak lucidly, effectively, and to the point. Nowhere, in any language, is better diction used than from the tribune of the Palais Bourbon.

The bourgeois flavor.

Most of the deputies are men of political experience. It is rarely that anyone goes direct to the Chamber without any earlier political training. Young Frenchmen who are politically ambitious

The ladder of French politics.

often get themselves elected to the council of the commune. After service there they become mayors or members of the general council of the department. As in America they find it advantageous to join various fraternal societies (more especially the Grand-Orient, as the Masonic order is called in France) and to use these affiliations as a means of broadening their acquaintance. Aspirants also find it desirable to keep their names before the public in the newspapers, and every rising French politician tries to hitch one or more local newspapers to his chariot.

Personality counts for much.

The French deputy feels that he owes far more to his district than to his party. In view of the lax party discipline which arises from this fact the personality of the candidate counts for more at an election in France than in England or America. Lord Bryce once remarked that the Frenchman who aspires to be a deputy must "cultivate an easy and genial manner," but must also, he says, "observe a decent regularity of life," especially in the staid rural areas. The *âme rigide* of rural France is as easy to shock as the puritan conscience of rural America. The candidate for the British House of Commons is expected to "nurse his constituency," and must be a good angel to every worthy local cause. There is the same expectation in France but it is not generally fulfilled because French politicians are not free with their francs, for the most part.

Deputies are poorly paid.

Members of the Chamber are paid sixty-two thousand francs per annum (about \$2,500 at the present rate of exchange). This is absurdly low. But they also receive allowances for secretarial help and for the entertainment of constituents who come to Paris. There is a fund out of which pensions to needy ex-deputies, as well as their widows and orphans, can be paid. A small deduction is made from the pay of each deputy for this fund. Every deputy, of course, expects to go higher and thus to obtain a larger emolument from the public purse. He hopes for a place in the ministry, and as ministries are frequently reconstructed his hope is by no means a forlorn one.

The deputy's working day.

Meanwhile the deputy earns his two hundred-odd dollars a month by serving as errand-boy-extraordinary for those who have the votes at home. His daily route is to the various ministries and back again. Ministers dispense the honors, the medals and the tricolored buttons, the administrative posts, mostly of small consequence, the tobacco licenses, and the college bursaries. To them

the deputy goes when his commune or arrondissement desires a bridge or a road, when a farmer wants to be compensated for damage done to his vines by a hailstorm, when a taxpayer disputes the tax-gatherer's claim, when a parent wishes to have an indulgent view taken of his son's performances in an examination, or when a litigant thinks that a word of recommendation might help him in a court of justice.

The voter writes to the deputy, and the deputy approaches the minister, and when either a grant of money, or a decoration, or a salaried post is in question, the minister is made to understand that the deputy's support at the next critical vote in the Chamber will be affected by the degree of benevolence that the minister displays. Thus there is a continuous process of triangular trafficking between the constituents, the deputy, and the ministers. The constituents insist; the ministers demur; and the deputy does most of the worrying. His job is vexatious and none too dignified, which may be another reason why France does not get better deputies.¹

The oratory of the pen counts for more in France than in England or the United States. Candidates for the Chamber make speeches, of course, but in reaching the public they place greater dependence upon the newspapers. Nearly all French newspapers are aggressively partisan and personal; they profess none of the party independence or neutrality that marks the great daily journals in America. The French newspaper is a personality, not an institution. It is the organ of its editor and the French editor never hides his light under a bushel. His editorials are flaming appeals, and he prints them on the front page with his name signed to them. So, when an editor or one of his close friends happens to be a candidate, the newspaper will devote its whole energies to the task of electing him. The news of the day will go off the front page if necessary. In such cases the editor gives the public what he thinks the public ought to want, and the public takes what it gets.

Influence of
newspapers.

There are real debates in the Chamber of Deputies, with set speeches eloquently delivered. These speeches are not usually long,—they rarely exceed a half hour,—but they are earnest, often impassioned, and sometimes brilliant. The deputies interrupt with applause or with taunts and cries of all kinds, while the presiding officer brings beads of perspiration on his face by vigorously ringing

Debates in
the Cham-
ber.

¹ See Lord Bryce, *Modern Democracies*, Vol. I, p. 258.

his bell for order. Not always, however, do the speakers restrict themselves to the issue which is before the Chamber; they frequently use the tribune for disquisitions on politics in general. The newspapers rarely print any of the speeches in full, but they usually give the substance, well flavored with their own praise or condemnation. To the onlooker from the galleries the debates in the French Chamber seem rowdy and acrid at times, but there is not much personal rancor behind these oratorical barrages. Deputies shake fists at one another at a safe distance on the floor or even throw out challenges to a duel—and then fraternize in the corridors.

The Cham-
ber's
powers.

The powers of the Chamber do not require much explanation. Its affirmative action is essential to the enactment of all laws whatsoever. All financial measures must originate in this branch of the French parliament, and although the Senate is not constitutionally debarred from amending or rejecting such measures it has generally refrained from interference. Passing the budget is the Chamber's big task each year and in this field its decisions are virtually final. Changes, after the budget has gone to the Senate, are relatively infrequent. As for non-financial measures, most of them also originate in the Chamber of Deputies but the Senate feels free to amend, delay, or reject these bills at its discretion. As has been pointed out, the Senate's usual course (when it does not like a bill), is to refer the measure to a committee for suffocation. But if the Chamber shows a live and sustained interest in the measure it will stir up the ministers and the ministers (if they dare) may then prod the Senate into concurrence. The process of lawmaking, however, is a big enough subject for a separate chapter.

Besides the books listed at the close of the three preceding chapters, mention may be made of Eugène Pierre, *Traité de droit politique, électoral, et parlementaire* (5th edition, Paris, 1919); Charles Benoist, *La loi de la politique française* (Paris, 1928); M. Aragon, *Guide pratique des élections législatives* (Paris, 1928); Henri Leyret, *Le gouvernement et le parlement* (Paris, 1919); Henri Maret, *Le parlement* (Paris, 1920); Pierre Dominique, *Monsieur le parlement* (Paris, 1928); and the various illuminating articles which appear from time to time in the *Revue politique et parlementaire*. See also *below*, p. 487.

CHAPTER XXV

THE PROCESS OF LAWMAKING

He that makes the law knows better than anyone else how it should be executed and interpreted. It would seem, then, that there could be no better constitution than one in which the executive power is united with the legislative.—*Jean-Jacques Rousseau*.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.—*Montesquieu*.

Legislative bodies have a threefold purpose: they make the laws, they authorize the expenditures, and they control administrative policy. By legislating they provide a system of rules governing the conduct of the people; by adopting a budget they furnish the funds with which government can be carried on; and by means of inquiries, interpellations, and investigations they exercise a continuous supervision over the administrative authorities. This represents a vast amount of work, and no legislature would ever manage to get it done without elaborate rules of procedure. These rules are not designed merely to expedite the passage of laws. Were that the case there would be no need for so many of them. They aim to ensure economy in public expenditures, to safeguard the rights of minorities in the legislative chamber, and to provide channels through which the ministers or other executive officials may be controlled. What we customarily call the "process of law-making," therefore, is in reality a good deal more than that. It is a process of legislation, appropriation, and supervision combined.

What the legislative process involves.

Both branches of the French parliament elect their own presiding officers and determine their own rules of procedure. The presiding officer is chosen, in each chamber, by secret ballot. Two or more vice presidents are chosen at the same time, also several secretaries and some additional functionaries known as quæstors.¹ Together these officials serve as a bureau or administrative committee and appoint all the subordinate officers such as clerks and messengers.

Parliamentary officials.

¹ The quæstors are financial officers; they attend to the payment of members and of other expenses.

The presid-
ing officers.

The position of the president in both chambers differs from that of the speaker in the British House of Commons, but is not very unlike that of the speaker at Washington. He is a party man, the choice of whatever combination of parties happens to control a majority among the members. In the Chamber of Deputies he is often one of the outstanding leaders. Upon his election to the chair he does not cease to be a partisan, as is the case with his prototype in the British House of Commons. By usage he is permitted to favor (if he does not do it too obtrusively) the bloc which elected him. In recent years it has become unusual for the president to leave his chair and take part in the debates, but it has not always been so. The fiery Gambetta, when he presided in the Chamber a generation ago, used to recognize himself, descend from his chair to the tribune, and pour forth oratory by the hour. By custom the president refrains from voting, even in case of a tie. If the vote is a tie the proposition is declared to be defeated. Some notable French statesmen have served as presidents of the Chamber, including Brisson, Painlevé, and Herriot.

Their
powers.

In general the powers of the presiding officers in the two French chambers are the same as in other legislatures. They recognize members who desire to speak, put questions to a vote, announce the results, decide points of order, and sign the records of proceedings. There is no important difference between the functions of the presiding officer in the Senate and in the Chamber of Deputies. But the president of the Chamber finds much greater scope for the exercise of his disciplinary powers in as much as the task of maintaining order is much more difficult in the lower branch. The Senate is a well-behaved body which seldom allows its temper to become ruffled. The Chamber of Deputies, on the other hand, always contains some obstreperous elements and ructions are not infrequent. When disorder flares up the president rings his bell and refuses to recognize anyone until the tumult subsides, or he puts on his hat as a warning, and when this does not restore order he suspends the sitting for an hour or two, thus giving opportunity for the atmosphere to cool off.

The com-
mittee sys-
tem:

1. The old
plan.

Both chambers of the French parliament make use of committees, or commissions as they are more commonly called. The traditional French method has been to choose committees indirectly by lot. At the opening of each session, and once a month thereafter, the members of each chamber are divided by lot into bureaux or

sections. The Senate has nine of these; the Chamber of Deputies has eleven. Then, whenever it becomes necessary to appoint a committee each bureau contributes one or more members. Until the beginning of the twentieth century all committees were constituted by the Chamber of Deputies in this way, and the Senate continued the same plan for many years thereafter. When an important project of legislation came before the Chamber a special committee was formed to consider it. But the projects became too numerous and there gradually developed the practice of referring several measures to the same committee. The result of this was to continue some of the committees throughout the session whereas the original intention was that each should disband as soon as it had reported on the individual measure submitted to it. Little by little, in this manner, the work of the Chamber was shifted from special to permanent or standing committees.

But the committees continued to be chosen by the bureaus, and the latter continued to be selected by lot, once a month. This meant that a permanent committee, by reason of its permanence, remained functioning long after the bureaus which had created it were dissolved. Vacancies were therefore filled by appointing members from the same geographical departments as those who had dropped out.

So long as committees were organized in this way they could develop no real sense of responsibility. They did not usually reflect the mind of the whole Chamber. A majority of the members on any committee were not necessarily in sympathy with the ministry. Being chosen indirectly by lot there was no reason why they should be. Hence measures which the ministers brought before the Chamber were frequently mutilated in committee until they were almost unrecognizable. And the reports of the committees were just as frequently rejected by the majority in the Chamber under ministerial leadership. The orderly process of legislation, and the development of a real committee system, were greatly impeded by this plan of bureau selection. Because of this it was partially abandoned in 1910. Since that date there have been further changes in the rules of the Chamber and at the present time only minor committees are selected by the old plan. The Senate has also made changes in the same direction so that its methods of organizing committees is now much the same as in the Chamber.

Why it
proved un-
satisfac-
tory.

The change
of 1910.

2. The new plan.

To-day the Chamber of Deputies maintains twenty regular committees or commissions, each having forty-four members. They are reconstituted annually. Each is made up by assigning a proportionate representation to the various party-groups in the Chamber as a whole. The procedure is as follows: first the numerical strength of each party-group in the Chamber is figured and officially announced.¹ Then each group is notified that it is entitled to its due proportion of members on each of the twenty committees and is asked to nominate them. Each group thereupon holds a caucus and selects from its own ranks a sufficient number of members as requested. This is usually accompanied by preliminary conferences and agreements, but if there is any rivalry that cannot be settled in this way the group decides the matter by secret ballot.

Publication of the lists and protests.

When each group has named its own representatives on all the committees the complete lists are made up and published. If, at the end of three days, no protest signed by at least fifty deputies has been lodged with the Chamber, the committees are deemed to have been chosen; but if a protest is filed in proper form the whole Chamber takes up the matter and settles it by vote if necessary. In the Senate the procedure is much the same but there are only twelve regular committees to be appointed, there are fewer party groups to be represented, the committees are smaller, and any twenty senators may file a protest against the acceptance of the group nominations.²

Retention of the bureaux.

The bureaux still remain in both chambers of the French parliament and are still constituted monthly by lot. But they retain only a shadow of their former importance. At the beginning of each parliament they canvass the election returns. Thereafter, from time to time, they are called upon to furnish members for special committees but only when these are expressly provided for. All important business now goes to the standing committees as in the legislatures of other countries.

This new plan of organizing the standing committees in a way that ensures a proportional representation of the various party-

¹ In case of doubt the individual deputy is asked to declare the group to which he belongs. If he disclaims allegiance to any group he is listed with the "non-inscrits," and these also are given their proportionate share of representation.

² For a full discussion of the procedure see the article on "Parliamentary Commissions in France," by Professor Lindsay Rogers, in the *Political Science Quarterly*, Vol. XXXVIII, pp. 413-442; 602-635 (September-December, 1923).

groups was opposed on the ground that it would cause the deputies to think of partisanship first and patriotism second. But it has proved far superior to the older method. It places the majority bloc in control of every committee and thereby diminishes the chance that the committee reports will be rejected by the Chamber as a whole. It ensures to the ministry a non-hostile consideration of its measures. Moreover, it affords each party-group an opportunity to place its members on committees in which they are interested. Under the old plan a deputy's own preferences were of little account in determining his assignment. Finally, the new arrangement imposes upon the committees a sense of responsibility for what they do. They have become bodies in which much of the real lawmaking work is done.

Advantages
of the new
plan over
the old.

Each of these regular committees has its own field of work. One deals with the budget, another with measures relating to the army, another with public works, another with industrial relations. There are standing committees on the navy, agriculture, education, public health, and commerce. Every legislative proposal is referred to the appropriate committee and makes no further progress in the Chamber until a report from the committee is forthcoming. The committees usually confine their sittings to Wednesday and Saturday of each week, there being no plenary sessions of the Chamber on these days. But they also meet on other days if there is urgent work to be done. The rules of the Chamber provide that "at least one day per week" must be assigned to them. There are no public hearings as in Great Britain and America; the sessions of French parliamentary committees are always executive sessions, but the author of the bill which is under consideration may be present.¹

How the
committees
do their
work.

This is one of the noteworthy features of French parliamentary usage, yet it hardly seems consistent with the commonly recognized usages of democratic government. Nor does it make for efficient committee work, because experience has everywhere shown that there is no better way of getting information than by means of public hearings. On the other hand, the members of the committees always confer with the leading supporters and opponents of any important measure which they are considering. This ensures both sides a chance to use their persuasive powers before a report is made. Each committee, moreover, is required to keep a detailed

No public
hearings.

¹ Even deputies who are not members of the committee have no right to attend unless the Chamber by special resolution authorizes their attendance.

record of its proceedings and this record is deposited in the archives of the Chamber where any deputy may inspect it.

Government measures and private members' bills as in England.

The French process of lawmaking resembles the English in one important feature, namely, in the distinction which is made between government measures (*projets de loi*), and private members' bills (*propositions de loi*). Government measures are submitted to parliament by a member of the ministry in the name of the President of the Republic. Immediately upon introduction they are referred, without reading or debate, to the appropriate standing committee. But bills relating to any matter, public or private, may also be introduced by any senator or deputy. Until about twenty years ago all such bills were first referred to a monthly committee (*commission d'initiative*) constituted under the old plan, and this body could reject any bill which did not seem worthy of further consideration.

The theory of lawmaking in both countries.

But nowadays all bills introduced by senators or deputies are ordinarily referred without debate to a standing committee in the same way as government measures. The presiding officer may, however, refuse to refer a bill to a committee if he regards it as proposing something that would be unconstitutional. And in any case these private members' bills, if they raise important issues of policy, have very little chance of being favorably reported if the ministry is hostile. In this respect the situation is much the same as in England, the general theory of lawmaking in both countries being that the ministry has the chief responsibility for all important measures. Accordingly, when individual senators or deputies desire legislation on any matter of general importance the usual plan is to offer a resolution requesting the ministers to draft and submit a *projet*, and if this resolution is adopted the ministers do as they are bidden.

Introduction of public bills.

Bills may be introduced in either branch of the French parliament but most of them, as a matter of practice, originate in the Chamber of Deputies. Among important measures the great majority are brought in as *projets* by the ministers. When any senator or deputy becomes interested in having a certain law enacted, his usual first step is to confer with the minister in whose department the matter seems to lie. He suggests to this minister the desirability of drafting and submitting a government measure. If the minister is favorably impressed he will lay the matter before his colleagues in the cabinet, and if they concur with him the rest

is easy. A bill will be prepared, introduced by the minister as a government measure, and probably passed. So the senators and deputies put all sorts of pressure upon the ministers in order to gain their support for particular measures.

What if the individual senator or deputy does not succeed in converting the ministers to his point of view? In that case he may go ahead by introducing his own proposition de loi, but without much likelihood of ultimate success unless the ministry undergoes a change of heart. Active ministerial opposition is fatal to the measure—or fatal to the ministry—for when the cabinet asks the Chamber to reject a bill the latter must either do so or find a new ministry. But the issue is rarely pressed to this extreme. Each committee, during its consideration of any bill which has been introduced by a senator or deputy, makes it a point to ascertain the attitude of the ministers before making its report. Under normal conditions, if the ministers are actively hostile the measure will not be favorably reported to the Chamber. On the other hand if the ministers are not opposed to the whole bill but only to some features of it, they may suggest amendments which the committee will consider and probably adopt.

Introduction of private members' bills.

Let us assume, however, that a measure has been referred to a standing committee and is approved by it. What is the next step? First the committee appoints a reporter, that is, it names one of its own members (not necessarily its chairman) to report the measure and defend it in the Chamber. This it does even in the case of government measures—a practice which contrasts sharply with that of the House of Commons. In England a government measure is always presented, explained, and defended on the floor by a member of the ministry. This minister (or his representative in the House), is primarily responsible for the progress of the bill at all stages. In the American House of Representatives bills are ordinarily reported to the House by the chairman of the committee which has considered them. But in France the "reporters" appointed by the committees to steer government measures through parliament are neither ministers nor chairmen; they are private members. The ministers and the chairmen may join in the debate, and usually do; but they do not direct it. For the moment the minister who has framed the bill, and who presumably knows most about it, is eclipsed by a private member. The chairman of the committee also plays second fiddle to the rapporteur.

How bills are reported.

Defects of
the system.

Here is a division of functions and responsibility which has not been altogether beneficial in its effects. There is much to be said for the English plan of having each minister pilot his own bills through the House. There is also a good deal to be said for the American plan of having the chairman of the committee do the steering. In both cases the responsibility is fixed and unified. The French method divides the leadership. It consequently divides the responsibility and this diffusion would be fatal were it not for the fact that the reporters and the ministers usually work in close coöperation. Incidentally the successful steering of an important bill may give the rapporteur great prestige and virtually ensure his early entrance into a ministry. Aristide Briand, for example, made himself a national figure by his work in guiding the Separation Law through the Chamber.

The progress of a
measure in
the Chamber.

When a committee is ready to report a measure the text is printed and distributed to the members of the Chamber. On the day appointed for debating it the reporter mounts the tribune and explains his committee's recommendation. Speeches dealing with the general principles of the bill may then follow, but questions relating to details and phraseology are passed over. No amendments are in order at this stage. When the debate on the general features of the bill has been finished a vote is taken on the question of proceeding to consider the details ("passing to the articles" it is called). If the Chamber votes No on this question the measure is defeated. But if it votes Yes the bill is then taken up section by section as in the House of Commons. During this stage amendments may be proposed by any member. In order to be recognized by the chair, however, a member must put his name on the presiding officer's roster and take his turn.¹ Sometimes, when important measures are under consideration, this roster contains scores of names and the debate runs on day after day.

Outsiders
participate
in the
French de-
bates.

In the House of Commons it is an unwritten rule that no one who is not a member may speak from the floor. He may appear at the bar of the House and have his say, but this position is technically outside the Chamber itself. Congress is also averse to hearing the voices of any but its own members, although the President of the United States is vouchsafed the privilege of addressing it in person at any time. Members of the American cabinet never speak in

¹ This does not apply to the ministers or to the reporter who is in charge of the bill, both of whom are entitled to recognition whenever they ask for it.

either House. If they attend they sit in the gallery. But in the Chamber of Deputies non-members may take a hand in debates—ministers whose seats are in the Senate, undersecretaries, bureau chiefs, and various experts who may be designated by the minister to explain the technical phases of a measure. These functionaries may be called in to elucidate, defend, or suggest changes. They are especially in evidence during the debates on the budget. Expert officials from the various branches of the administrative service come in and are sent to the tribune to explain what the figures mean. This plan is not without its advantages, for it means that the talk is by men who are close to the figures and know what they are talking about—which cannot always be said of the budget debates in other legislative bodies.

Debates on the details of measures might be indefinitely prolonged in the French Chamber were it not for two considerations which operate to keep discussion within bounds. One is the fact that most of the bills (especially the *projets de loi*) are short and simple; they do not contain page after page of detailed provisions as is the case with so many legislative bills in Great Britain and America. In France the details of a law are generally left to be worked out by the council of state and promulgated in an executive decree. This is a wise usage. It saves the time of parliament, ensures a more careful consideration of details, and gives flexibility to the laws. At any rate debate on the general principles of a bill, when it comes up on the floor, exhausts most of the opposition.

In the second place the rules permit the Chamber to put an end to debate on any clause or section of a bill by applying the *clôture*. This can be done by majority vote at any time provided at least two members have spoken on the question, one on each side. A motion to apply the *clôture* cannot be debated in the ordinary way, but before the motion is put an opportunity is always given for one deputy to speak against it. The *clôture*, if carried, does not debar a member of the ministry from continuing the discussion, and ministers frequently take advantage of this privilege. But if a minister prolongs the discussion beyond the *clôture*-vote, at least one deputy must be given the opportunity of replying to him. The intent of the rules is that some private member, and not a minister, shall have the last word.

There is one other custom in the French Chamber which deserves mention because of its unusual character, namely, the practice of

Methods of limiting debate:

1. No discussion of details.

2. The *clôture*.

Debating by proxy.

permitting absent members to write their speeches and have them read by their friends. The practice is by no means common but the privilege is there for those who want it. When a deputy is susceptible to stage fright, or has a poor voice, he can take this way of getting his ideas before the Chamber. He writes an oration—or gets some facile journalist to do it for him. Then he stays away while some Demosthenes from his own party delivers it for him. The speech goes into the official journal and into the newspapers where the yokels of the Vosges or the Vendée can see what a clever representative they have. To get a speech printed, however, a French deputy must first get it spoken—every word of it. There is no provision, as in the American House of Representatives, for having speeches printed without being delivered.

Methods of
voting in
the Cham-
ber.

Votes are taken by a show of hands, or by calling on the Ayes and the Noes to rise in succession. If there is any doubt as to the accuracy of the count it is not customary to call the roll (as in America) or to have the members pass through turnstiles into division lobbies (as in England). Instead of calling the roll, a balloting urn is passed from seat to seat and each deputy drops his ballot into it. There is no secrecy in this balloting; each deputy can see how his neighbors vote.¹ If a deputy is absent he may ask some fellow member to put in a ballot for him. France is one of the few countries which permits its legislators to vote by proxy.² Finally, if the result of this ballot does not satisfy the Chamber, fifty members may demand a "ballot at the tribune." In this case the names of the deputies are called in alphabetical order. As each name is called the deputy walks to the tribune and hands his white or blue ballot to one of the secretaries. No proxy voting is allowed in this case, hence the balloting at the tribune sometimes gives a different result from the balloting in the urn.

When the debate "on the articles" has been concluded the

¹ The ballots are in the form of small slips of paper which are provided by the bureau of the Chamber at the beginning of each session. Every deputy is given a package of these slips, of which some are white and some are blue, each slip having his name printed on it. He keeps these slips in the little swivel desk which is attached to the back of the seat immediately in front of his own. When a balloting takes place he uses a white slip to vote Aye, or a blue slip to vote No.

² The privilege of voting by proxy has been considerably abused. "A deputy who is detained by political or social duties asks some friendly member to cast a ballot for him; by way of being on the safe side he asks several of his friends to do so. Half a dozen of his ballots may be thrown into the urn. Ballots are often cast for members without their permission and even for members who are present." E. M. Sait, *The Government and Politics of France* (New York, 1920), p. 220.

question of passing the bill as a whole is submitted to the Chamber and if this vote is affirmative the measure goes to the Senate where it follows much the same procedure as in the lower House. Having passed the Senate it is laid before the President of the Republic—not for his signature but for promulgation. The president's approval is not essential to the validity of a law, but the constitution authorizes him to delay promulgation, meanwhile asking the chambers to reconsider their action. This power to delay promulgation is of no practical importance, however, because the president never exercises it.

Measures which pass the Chamber are then sent to the Senate.

In order to be duly enacted, a bill must be passed by both the Senate and the Chamber of Deputies in exactly the same form. Any amendment made by one chamber will serve to defeat a measure unless it is agreed to by the other. Bills are frequently hung up by a failure to procure agreement on some particular provision, sometimes a minor provision. When this happens with respect to government measures the usual practice is for the ministers to intervene and break the deadlock if they can. They may suggest a compromise and urge it from the tribune in both chambers. This they are able to do in a direct and effective way because they have the right to speak in both. Or, if the issue is one of real importance, the ministers can demand that one of the chambers recede and may threaten to resign if it does not. In the case of private members' bills the ministers do not intervene, and compromises are not so easily effected.

What happens when the two Houses disagree?

In France, as in other countries, the most important business at every legislative session is related to public revenues or public expenditures. France has had a national budget system for many years, and in its main features this system is like that of Great Britain. The work of framing the budget is begun each autumn by the minister of finance who requests the other ministers to prepare their estimates for the next fiscal year. When these estimates have been obtained they are consolidated into one huge document and placed before the ministry for revision. Accompanying the estimates is a statement, prepared by the same minister, showing the anticipated revenues. The ministry revises and adjusts the figures as may seem advisable, its aim being to bring the ordinary expenditures within the limit set by the estimated national income.

The French budget system:

1. The estimates.

In France the budget makes a distinction between ordinary and extraordinary expenditures. The former include, or are supposed to

2. The two types of expenditure.

include, all the current expenses of government; the latter comprise expenditures which are not of a current nature, such as the cost of carrying on a war or restoring devastated territory or providing some great public improvement. Extraordinary expenditures are not paid out of current revenue but by borrowing money. The distinction is sound in principle but its practical application has left much to be desired. There is a strong temptation to secure a balance between current revenue and current expenditure by transferring to the "extraordinary" list many things which do not really belong there. French ministries have done this on a considerable scale since the war. Billions of francs have been borrowed for extraordinary expenses on the assumption that the money will ultimately be repaid out of the German reparations.

3. The project is laid before the Chamber and referred to the budget committee.

When the ministry has finished with the estimates of receipts and expenditures they are presented in a *loi de finances* to the Chamber of Deputies.¹ This is done in a budget speech by the minister of finance. The Chamber, after hearing the minister's general survey, refers the whole matter without debate to its budget committee, which is the most important of all its standing committees. This committee forthwith pitches into work on the ponderous *dossier* and may spend months at its task. Public hearings are not held, as in Congress, but the budget committee consults freely with the financial officers of all the ministerial departments. It appoints subcommittees to study portions of the estimates, and these subcommittees sometimes become so inquisitive that the ministers resent their intrusion into departmental affairs.

Work of this committee.

On the whole, however, the budget committee works in coöperation with the ministers and rarely assumes a hostile attitude. It is free to insert, strike out, reduce, or increase, any item,—and it does make a good many changes, but they are not of great importance. The established practice is to make no substantial alterations, particularly by way of increase, unless the committee is assured that the ministry will approve. No other course, indeed, would be practicable, for if the budget committee and the ministry were not in agreement it would be necessary for the Chamber to choose between supporting the ministry and forcing it to resign.

4. The budget debate.

When the committee has finished its work, the revised budget is laid before the whole Chamber where it is dealt with like any other

¹ In printed form the budget is a document of several hundred pages and contains forty to fifty thousand items, all grouped by administrative departments.

government measure. There is a debate on its general principles, followed by a consideration of the "articles" or items. The rapporteur of the budget committee, not the minister of finance, is in charge of the measure and is responsible for getting it through the Chamber without mishap. The minister is merely his adjutant. This is in contrast with the English practice of having the chancellor of the exchequer guide the budget through the House of Commons. Nor does it closely resemble the procedure in Congress where the chairman of the committee on appropriations brings the budget before the House and assumes the task of getting it through. Like this chairman, however, the reporter of the budget committee in the French Chamber is invariably a skilled and experienced parliamentarian. He sits on the front bench during the budget debates, with the members of his committee alongside him. As groups of items are taken up in succession he sees to it that questions are answered and objections met. The minister of finance also takes a prominent part in the debate, and is usually the most frequent participant in it; but the reporter is the man who does the steering. It is his nod that sends speakers to the tribune.

There is one other feature in which French budget procedure differs from English, and it is of much significance. Mention has been made of a famous rule in the House of Commons which provides that no proposal of expenditure can be considered unless it emanates from the crown, that is, from the cabinet. In the Chamber of Deputies there is no such provision, either by rule or by usage. The Chamber can insert new items in the budget or increase the size of items already there.¹ And this freedom it often utilizes, even in the direction of revising the budget upwards. It is true, of course, that the Chamber cannot take this action against the resistance of the ministers unless it is ready to force the ministry's resignation; but it is equally true that the ministers, being practical politicians, do not force the issue to this alternative if they can avoid it. When the Chamber seems bent on making an increase in the budget the ministers usually assent to it unless the alteration is one that would throw the whole financial scheme out of gear and necessitate a general revision of the figures.

There is no rule in France that proposals of expenditure can only be made by a minister.

¹ Since 1900, however, the Chamber has had a rule that no private member may propose during the debate on the *loi des finances* any amendment involving the establishment of a new public office or the increase of any existing salary or pension. Nor may any private member offer a resolution asking the ministry to propose such action.

But usage has tended to secure the same results.

In matters of this kind the customs of a lawmaking body count for more than its formal rules. And the traditions of the Chamber of Deputies are steadily hardening along lines similar to those of the House of Commons. The deputies realize that a minister of finance cannot make a balanced budget if the Chamber insists upon changing items at will. A national budget is a very complicated affair, with all its parts adjusted and interlocked. If you change one item, there is always an equally good reason for changing others, and presently the whole thing is jerked wide open. Hence, as a practical matter, there is a strong incentive to let the items stand as they are. Radical changes, when the budget is passing through the Chamber, are now much less common than they used to be.

Proposals to spend money introduced by deputies.

In addition to proposing changes in the budget when it is under consideration, any member of the Chamber may introduce a proposal which involves the expenditure of money. Such proposals also go to one of the standing committees, depending upon the general purport of the measure. If favorably considered they are then referred to the committee on the budget from which a few of them may come back to the whole Chamber for discussion. The budget committee has adopted the practice of refusing to report any private member's proposition unless the minister of finance gives his approval. This practice has also strengthened the ministry's control over appropriations. The ministry's hand would be even stronger if appropriations could be made for a longer term than a single year. But this is not permitted. The principle of *annualité*, on which French statesmen lay great stress, requires that all revenues and all expenditures shall be authorized for one year only. This requirement is not expressed in the constitutional laws of 1875 but rests on an unwritten law which has been scrupulously observed since the days of the Great Revolution.

The principle of *annualité*.

Adding "riders" to appropriation bills.

In the Congress of the United States it has long been customary, when appropriation bills are on their way through the Senate or the House of Representatives, to attach "riders" to them. A rider is any provision which has no relation to the bill but is tacked on as a way of getting the extraneous provision a quick ride to enactment. To the annual appropriation for the maintenance of the federal courts, for example, Congress may attach a rider providing that injunctions shall not be issued in labor disputes. Or it may append to the appropriation bill for the department of

agriculture a stipulation that fruit growers shall not be prosecuted for combining to raise prices. A rider may have any degree of irrelevancy. In Congress this privilege of tacking riders to money bills has been grossly abused, and the same is true of the French parliament. About a dozen years ago, however, the Chamber of Deputies adopted a rule which forbids the adding of riders to the regular budget. Nothing can now be inserted in the *loi de finances* except items which directly relate to revenue or expenditure. But riders may still be added to special appropriation measures or to ordinary laws.

Putting the budget through the Chamber of Deputies is slow business. It usually takes three months or more. The debate proceeds item by item, but the votes are taken by groups of items. One after another the deputies go to the tribune and utilize some proposed appropriation as the text for a long disquisition on the conduct of French government in general. Personal and local grievances are aired extensively. The presiding officer exerts himself to keep business moving, but not always with success. During the past twenty years the situation has been considerably improved by the operation of a rule which provides that ministers may not be "interpellated" on matters arising in the course of the budget debates.¹ At any rate, when the debate is finished, and the budget bill has been passed by the Chamber, it goes up to the Senate where its progress is usually more rapid.

Final stages
in passing
the budget.

The Senate also refers the measure to a committee, but this body does not keep it long or study it very carefully. The bill soon comes back and is debated by the Senate as a whole. Under certain limitations (which have already been mentioned) amendments may be proposed by any senator. Now and then some important changes are made by the Senate and the bill is returned to the Chamber, where the amendments may be accepted, or, as often happens, most of them are rejected. In the latter case the minister of finance endeavors to effect a compromise, and in this he is aided, if need be, by a joint committee of conference. Eventually an agreement is reached and the budget act goes to the Elysée for promulgation by the President of the Republic.

The budget
in the Sen-
ate.

Now it is obvious that this elaborate procedure must consume a lot of time. Although the minister of finance begins his work of arranging the estimates in October, the budget does not usually

The provi-
sional
"twelfths."

¹ Concerning the *interpellation* procedure see below, pp. 483-486.

reach the President until the following midsummer. Meanwhile a new fiscal year has begun on January first and the government must have money with which to carry on the business of the country. So the two Chambers bridge the gap by voting certain lump sums as requested by the minister of finance. These sums, because they are supposed to cover essential expenditures for one or more months of the year, are known as "provisional twelfths." They are apportioned among the various branches of the administration by presidential decree. Later, when the budget is finally voted, the sums already spent are deducted from the totals.

The Chamber's control of finance.

From the foregoing outline of budget procedure it will be seen that although the control of national finances exercised by the Chamber of Deputies is not so complete as that of the House of Commons, it falls very little short of it. The ministers have the initiative, but the Chamber controls the ministers. Every year a full account of all money spent during the preceding year must be laid before the deputies. While it is true that the French Senate may amend the budget, while the House of Lords may not; this difference is of no great practical significance for when the Chamber stands firm the French Senate virtually always recedes. Not so the Senate of the United States. It amends money bills with a free hand and when the House of Representatives declines to concur the issue goes to a conference committee where the Senate usually wins. So one might sum up the matter in this way: The House of Commons has complete control of national finances both in law and in fact; the Chamber of Deputies has it in fact but not in law; while the House of Representatives has it in neither.

Questions addressed to the ministers.

The Chamber's control of the French ministry is a corollary from its power over the purse. For there is nothing that a ministry can do without funds. Governments must have nourishment in order to live. But the French Chamber has other ways of holding the ministers to account. Its members have the privilege of questioning the ministers on the floor. Any deputy can ask questions, either orally or in writing. The minister to whom questions are addressed must answer them unless there are reasons of state which make it advisable to refuse. Refusals to answer questions relating to diplomacy are sometimes based on this ground. When a minister answers a deputy's question it is permissible for the latter to reply; but no further debate is permitted. The president of the Chamber merely declares the incident closed. Many questions

are asked at every session, some of them relating to the most trivial details of administration.

A much more energetic means of enforcing the continuous responsibility of ministers to the Chamber is provided by the more formal questioning procedure known as the interpellation. This is a feature of great importance in France because it often settles the fate of ministries and in fact affords the usual way of determining whether a minister possesses the confidence of the Chamber. In England a ministry rarely goes out of office except when the people pronounce against it at a general election; in France it is hardly ever ousted in this way but is given its coup de grâce by an adverse vote on an interpellation in the Chamber. An interpellation is a formal question framed by some member of the Chamber and addressed to a minister; it differs from the ordinary question in that it must always be in writing; it paves the way for a general debate in which everyone has the right to take part, and the debate on an interpellation can only be closed by a vote.

Interpellations.

An interpellation may be framed by any member of the Chamber and may relate to any question of public policy except that no interpellation may be raised on matters which come up in connection with the annual budget. Couched in the form of a question the interpellation is presented to the presiding officer of the Chamber who reads it aloud and then transmits it to the minister concerned, or, if it raised a question of general policy, to the prime minister. If the interpellation is one which would elicit state secrets, and hence in the opinion of the ministers ought not to be discussed, they may refuse to accept it. This they sometimes do in the case of interpellations which concern matters of foreign policy. But if they accept the challenge a time is fixed for the minister's reply and for the debate thereon. The debate may be brief or prolonged according to the amount of interest which the Chamber displays in the matter. But in any case it must be concluded by a vote; there is no other way by which the Chamber can get back to its regular order of business.

How interpellations are presented.

The motion to close an interpellation debate is made in some such form as this: "The Chamber, having heard the explanation of the minister, passes to the order of the day," or "The Chamber, having heard the declaration of the minister, and being convinced that the grievances voiced during the course of the debate will be duly set right by the government, returns to the order of the day."

Putting the *ordre du jour*.

Several motions, in fact, may be offered, in which case the simple motion to resume business, accompanied by no qualifying clause, is always voted on first. Sometimes a ministry rests content with this simple motion, but as a rule it insists on an expression of confidence—an *ordre du jour motivé*, it is called.

Significance
of the inter-
pellation.

Now the significance of this procedure arises from the fact that the ministers must resign unless they can obtain a majority vote in the Chamber on the question of passing to an order of the day. Most interpellations are not the result of a quest for information. When it is merely information that a deputy wants he can get it more quickly and more easily by asking an ordinary question. The purpose of the interpellation is twofold: First, to draw the attention of the whole Chamber (and, incidentally, of the newspapers) to some particular phase of ministerial policy which is believed to be open to criticism, and, second, to precipitate a vote which the framers of the interpellation hope will be adverse to the ministry. It is intended to be a means whereby the legislative body exercises its function of holding the administrative authorities to account and thus preventing the rise of an irresponsible bureaucracy.

Keeps the
ministers on
the *qui vive*.

Every ministry is from time to time put upon its mettle in this way. It must prepare to face a series of interpellations during the course of every session. Most of them it will succeed in answering to the satisfaction of a majority in the Chamber, but sooner or later, and perhaps quite unexpectedly, the ministers find themselves overthrown when the vote is taken. More French ministries have been turned out of office in this way than in all other ways combined. Hostile deputies lie awake nights thinking up ingenious queries which are bound to cause embarrassment no matter how the ministers may answer them.

Objection-
able fea-
tures of the
French in-
terpellation
procedure.

The interpellation has been a feature of French parliamentary procedure for a long time and it would now be difficult to abolish it. But most students of comparative government, and some French publicists as well, look upon the interpellation as a vicious institution. In its actual operation it does not tend to rectify the course of ministerial policy but to wreck the craft. Interpellations are not essential to the maintenance of ministerial responsibility, for England has had no difficulty in getting along without any such procedure, and so have the British self-governing dominions. The privilege is open to flagrant abuse, moreover, as the political history of France has shown.

If interpellations were confined to broad issues of public policy there would be something to be said for them, but they are not so confined. It is true that a ministry is not compelled to "poser la question de confiance" on minor matters, but there is a strong temptation to meet challenges when they come. Hence relatively trivial matters are sometimes magnified into issues of nationwide importance. It stands to reason that even the most capable minister will make a mistake now and then,—an error of judgment which in England or America would be readily overlooked if his general policy commanded approval. In Great Britain the House of Commons has always gone on the principle that a cabinet should not be turned out of office for some relatively inconsequential error which one of the ministers may have made. It parts company with a cabinet only when it feels that the time has come for a new deal all around.

Puts the fate of ministers upon minor issues.

But in France there is no such tradition. The Chamber of Deputies lets itself get wrought up to a fever heat on some such issue as the proper length of the luncheon period for public employees or the pay of the gendarmes in Paris. The debate crackles as though the salvation of the Republic depended on setting these momentous questions right. The atmosphere grows tense while the deputies, one by one, step forward to the tribune and deposit their white or blue ballots. Outside the Chamber the bookmakers and gamblers are laying wagers on the outcome as though the whole proceeding were a cock fight or a horse race. Perhaps the minister who declined to lengthen the luncheon hour emerges in triumph; perhaps he squeezes by with a few ballots to spare; or it may be that the vote marks the end of his ministerial career.

Trivial matters are often magnified.

It is sometimes asserted that the instability of French ministries is not mainly due to the interpellation procedure but results from the bloc system and the tenuous grip which a majority bloc usually maintains upon the Chamber as a whole. French cabinets are practically always coalitions, depending for their support on groups of deputies among whom there is no genuine cohesion. Any test of strength, no matter how applied, would disclose their weakness as compared with English ministries. In the British House of Commons an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion he can move to reduce the salary of some minister. And if a motion of this sort is adopted it

The interpellation is not the only reason for ministerial instability in France.

has exactly the same effect as an adverse vote upon an interpellation in France. Such motions are made from time to time in the House of Commons, but they are not adopted; they are regularly voted down. This is because the British ministry can count upon the votes when it needs them. In France the ministers have no such unified, dependable support. Their followers often scuttle from the ship when a gust of unpopularity is encountered. So it is not the interpellation procedure alone, but the intrinsic weakness of party discipline that is responsible for shortening the average life of ministries in France.

The Chamber in session.

Among the thousands of Americans who go to Paris, few ever think of visiting the Palais Bourbon and taking a look at the Chamber of Deputies in session. This is true even of Americans who are actively interested in politics at home. Yet the Chamber is worth a visit, and admission to the galleries can be had for the asking. There is a fair chance of arriving in the midst of an exciting debate, for the sittings of this body rarely bear much resemblance to a prayer meeting. The visitor will be surprised to see the deputies addressing themselves to the audience and not to the chair as is the practice in other countries. If he understands the language he will be exhilarated by the swift and often brilliant exchanges of repartee that pass between the tribune and the floor. And if, perchance, his visit happens to occur when the Chamber is deciding the outcome of an interpellation he will see a sight that is not soon forgotten. The excitement, the clamor, the gesticulations, the crowded galleries, the thronged corridors, and all the rest of it—they constitute a spectacle that only Frenchmen can provide. Surveying it all, he may wonder how a great nation ever manages to get its laws made in this way. The answer is that it doesn't. France does not sit back and wait for the politicians to put things in order for her. If she did she would be a true Cinderella among the nations.

The law-making process in summary.

The laws of the French Republic are really framed by administrative experts under the direction of the ministers; they are revised and touched up by standing committees; the details are filled in by the council of state and promulgated by presidential decree. The Chamber is a "lawmaking body" in a titular sense only. Its prime function is deliberative—to reflect the desires and opinions of the people, in other words to keep the executive and administrative branches of the government responsive and responsible. It

is the grand inquest of the Republic with the function of criticizing the powers that be, and displacing them whenever the occasion arises, as it frequently does.

Obviously the *Règlements de la Chambre des Députés*, and the *Règlements du Sénat*, in other words the rules of the two chambers, are the best sources for the study of their procedure. But mention should also be made of André Breton's volume on *Les commissions et la réforme de la procédure parlementaire* (Paris, 1922); J. Onimus, *Questions et interpellations* (Paris, 1906); and the *Précis élémentaire de législation financière* (Paris, 1917). There are many interesting comments on French political methods in the second volume of Sisley Huddleston, *France and the French* (2 vols., New York, 1925) and in Laurence Jerrold, *France Today* (London, 1916). The most recent general book on the subject is Lindsay Rogers, *The French Parliamentary System* (New York, 1931).

French budget procedure is fully explained in René Stourm's book on *Le budget*, which has been translated into English (New York, 1917). Mention should also be made of Harvey Fisk, *French Public Finance* (New York, 1922) and R. M. Haig, *The Public Finances of Post-War France* (New York, 1929). The article by Lindsay Rogers, already referred to (*above*, p. 470, *note*) is excellent and so is the discussion in Professor Sait's volume (*above*, p. 450). See also the books listed at the close of the two preceding chapters.

CHAPTER XXVI

POLITICAL PARTIES IN FRANCE

To keep united, the only way is to stay disunited.—*Jules Ferry.*

Origin of
political
parties in
France.

Organized political parties have existed for a relatively short time in France. Certainly there were none in Bourbon times, before the Revolution of 1789, for political parties do not exist in a despotism. Nor can the term political parties be fairly applied to the various factions (Jacobins, Girondists, and the rest) which jostled each other in and out of power during the turmoils of the First Republic. It was not the aim of these factions to get control of the government by constitutional, non-violent methods. Bloodshed and imprisonment figured as a part of their day's work.

Evolution
of the four
basic
groups.

Even after the Revolution had run its course, and after Napoleon I had been exiled, when France professed to be a constitutional monarchy with a frame of government like that of England, it seemed impossible to create a party system that would function. There were evanescent groupings from time to time during the next thirty years; but it was not until the establishment of the short-lived Second Republic (1848-1852) that French political parties began to acquire something of a stabilized basis. At the general elections of 1849 there were four well-marked party-groups in the field. Ranging from Right to Left these were the monarchists, the conservative republicans, the radical republicans, and the socialists. So, if an exact date must be found for the origin of the French party system this one will do as well as any other, in as much as the fourfold repartition of political opinion has remained to the present day. All party harmonies and discords during the past eighty years have been mere variations of this four-octave composition.

The varied
twists and
turns.

From time to time, however, these four party divisions have proved insufficient to shelter all varieties of opinion among the people, and further disintegrations have taken place. At other times there has been a coalescence of two or more groups into a bloc or working alliance. French parties are constantly shifting

like the bits of glass in a kaleidoscope, yet the kaleidoscope is one in which the fragments always represent varying shades of the four original colors. The American student finds it hard to master the French party system, for the reason that he invariably tries to understand it in the light of his own preconceived ideas. He has his own conceptions of what political parties are and ought to be. These he has derived from his acquaintance with the party system in the United States. Consequently he tries to fit the French system into his own mental stereotypes; he looks for analogies, for national conventions, with their high-noting and keynoting, national committees, national chairmen, machines, bosses, rings, and steamrollers—with perhaps a Tammany Hall operating in Paris. Then he is upset when he finds that although France claims to be a “sister republic” she has virtually none of these familiar phenomena at all.

Now the first thing that the American student of French politics ought to do (if he can) is to banish all these home-grown notions from his mind. He should approach his study of the French party system as though he were a man from the upstart planet Pluto, without any ideas as to what parties are or how they function. For the American and French party systems have nothing in common. They are unlike in their organization, their aims, and their methods. To make the confusion worse, they use the same terms to mean different things. “The system of party government in France, if indeed it can be characterized by such a term,” says one writer, “is the most interesting and baffling feature of French political organization.”¹ He is right. Baffling it certainly is to outsiders, but largely because they try to understand it without any knowledge of French political history or of the peculiar environment in which the game of Gallic politics is played. An American political party in Congress is an organization with traditions behind it. A French political party is a leader and a handful of men in the Chamber.

To understand French party politics of to-day it is necessary to go back fifty-odd years to the national assembly (or constitutional convention) which framed the constitutional laws of the Third Republic. In that body, as has already been pointed out, the monarchists controlled a majority, but they were badly divided, hence the republican minority managed to have its own way in

A word of caution.

A brief survey of party history in France:

1. The national assembly of 1871-1875.

¹ Raymond L. Buell, *Contemporary French Politics* (New York, 1920), p. 1.

many matters. They outvoted but did not convert the monarchists. The latter remained unreconciled to the republic.

2. The election of 1876.

Then came the parliamentary election of 1876, the first general election under the new régime. This campaign developed into a pitched battle between republicans and monarchists, between those who desired the republic to endure and those who wanted to be rid of it at the first opportunity. This, however, was only the superficial line of cleavage; the real issue went deeper and reached to the very fundamentals of government. To accept the republic was to accept the implications of the Great Revolution, something that the monarchists of France had never done. Neither monarchists nor republicans, moreover, could hold their own ranks solid. Among the republicans there were three factions, calling themselves radical republicans, moderate republicans, and conservative republicans.¹ There were also three factions among the monarchists, but the division here followed dynastic lines into Bourbons, Orleanists, and Bonapartists. So the question was: Would these six groups unify into two, or would the divisions continue and be accentuated? The history of the past fifty-five years has answered that question.

An interpretive digression.

It is not surprising that French parties have disintegrated. Americans assume that the two-party system is the normal one because it has lasted so long in their own country, but bipartisanship is not a normal feature of modern politics the world over. In every country of continental Europe during the past half century there have been more than two parties, often seven or eight of them. These party-groups run the whole gamut of political inclination from case-hardened conservatism to weird proletarianism. From Sicily to Siberia there are black shirts and red flags, with every shade of political pigmentation between. This disintegration of partisan groups is not the product of any one political system, for it has been characteristic of continental monarchies and republics alike. It is to be found in Czechoslovakia and in Spain, in Poland and in Portugal, as well as in France.

Some reasons for party disintegration all over Europe.

Many political philosophers have tried to divine the reasons for this phenomenon, but their efforts have not been attended with great success. It is apparently the outcome of several causes in-

¹ Owing to the position which they had occupied on the floor of the national assembly during the drafting of the constitution these three groups of republicans were colloquially known as the Extreme Left, the Left, and the Left Center.

cluding the prominence of economic and religious issues in continental politics, the disinclination of the average European to let anybody else do his political thinking for him, the lack of a consensus on the fundamentals of government, and the bondage of the European mind to the past. This last-named factor is perhaps the most important. Past history influences present politics, always and everywhere. Why are our own southern states Democratic? Try to answer that question and see how far you will get without plunging into the political turmoils of seventy years ago. And so it is in France. Such a term as Extreme Right will mean little to those whose knowledge of French history begins with the great war.

The general elections of 1876 gave the republicans a majority in the Chamber of Deputies and thus assured the republic a renewed lease of life. Dufaure, a leader of the Left Center, became prime minister, but soon gave way to Jules Simon who was a member of the same group. It was during the latter's term that President MacMahon made his flank attack upon the new régime by dismissing a republican ministry, although it possessed a majority in the Chamber, and installing a cabinet drawn from the Right. To keep his new ministry in power MacMahon had to dissolve the Chamber, whereupon the voters decided against him at the polls and he was compelled to reinstall a republican administration.

Defeat and decline of the monarchists (1877-1881.)

MacMahon's subsequent resignation of the presidency and his replacement in that office by a loyal republican brought France beyond the parting of the ways. With this change all immediate possibility of a monarchical restoration faded away. The monarchists, who had temporarily laid aside their dynastic differences and had supported MacMahon as the harbinger of a returning throne, now accepted the inevitable. Reluctantly they became convinced that the republic was in the saddle, with its feet in the stirrups, and must be given a chance to ride. Although most of them continued to be royalists at heart, therefore, they thought it good strategy to cease calling themselves so and preferred to be known as conservatives, or merely as the "party of the Right." "You have rallied to the republic," said Léon Bourgeois to a group of them, "but that means nothing. Do you accept the Revolution?" They were slow to do it. Monarchical sentiment died hard in France, and even to-day its spark of life has not been wholly extinguished.

The republicans in the saddle.

The republican split of 1881-1882.

The crisis of 1877 unified the republicans for the moment, but they did not stay united. Having triumphed over the royalists they fell to quarreling among themselves. Léon Gambetta had been their most conspicuous leader in the successful balking of MacMahon's plans, and so long as the existence of the republic seemed to be in danger he was just the man to hold its friends together. But Gambetta was a radical republican, too radical for the moderates. The latter distrusted his leadership and when he became prime minister in 1881 they would neither enter his cabinet nor give it their support. So Gambetta's ministry was speedily overthrown by an adverse vote of the Chamber and shortly thereafter he died. His radical followers, whose idol he was, could not forgive the other wing of the party. So they cut loose from the republicans altogether and set up an organization of their own which they called the Radical party.

Party divisions during the last two decades of the nineteenth century.

By 1882, therefore, the party groupings had come back to something like what they had been in 1849. First there was the Right, with two factions which differed only in that one was more reactionary than the other. Next to them came the Republicans of the Left Center and the Left, in other words the conservative and moderate Republicans. During their temporary alliance with Gambetta's Radicals the latter were sometimes called Opportunists, but after 1881 they preferred to designate themselves as Moderates. More recently they have been known as Republicans of the Left or the Republican Federation. Third, after 1881, there were the Radicals, constituting the members of the Extreme Left who had combined with the Republicans in 1877 and deserted them in 1881. Finally, the Chamber contained a few Socialists at this time, although hardly enough to constitute a political party.

The shiftings in the four fundamental groups.

These four groups, Conservatives, Moderates, Radicals, and Socialists, were by no means homogeneous groups, however, for each included men of considerable diversity in political opinion. No one group, moreover, was able to command a majority in the Chamber, hence every ministry that came into power had to be formed by a process of coalition, and remained in power only so long as the bloc could be held together. This, in most cases, was a relatively short time. During the last fifteen years of the nineteenth century there were twenty-two ministries, so that the average tenure was only about eight months. The Radicals and the Moderates sometimes joined in a "ministry of concentration" against the

Conservatives, while the Conservatives and the Moderates sometimes joined in a "ministry of pacification" against the Radicals. Conservatives and Radicals, being at the two extremes, never found coalition possible. In a few cases the attempt was made to construct a ministry out of homogeneous material (as in England) by drawing the ministers wholly from the Radical or Moderate ranks, but with no success. So the instability of French cabinets became proverbial and even Frenchmen began to complain that the principle of ministerial responsibility was being carried to an absurdity.

Five episodes in the political life of France during the past forty years have contributed to the demoralization of party discipline. The first was the Wilson scandal of 1886. A daughter of President Grévy married an expatriated Englishman, Daniel Wilson, and brought this son-in-law to live in the executive mansion. Sheltered under the same roof with Grévy, the Englishman was believed to exercise a sinister influence over the octogenarian chief of state. At any rate he was quite voluble in telling his intimates about what he could do in the way of getting presidential favors for the right people. It presently developed, moreover, that various applicants had paid good money to shady go-betweens in the expectation that they would be given rank in the Legion of Honor.

An investigation exonerated President Grévy from any share in the profits of this trafficking; he was merely the victim of a misplaced family confidence; but public sentiment could not now forgive his initial fault in having taken this miscreant from a nation of shopkeepers into the honored precincts of the Elysée. So the Paris boulevards rang with the frivolous refrain, "*Ah! Quel malheur d'avoir un gendre!*" and the old man had to go. Not without effort was he wrenched from the presidential chair, however, for he was obstinate and fond of the emoluments. At any rate the whole sordid episode was used by the Right to discredit the Moderate Republicans who had chosen Grévy to the chief executive office and from whose ranks he had risen to his post of leadership. The republic, they declared, was a synonym for corruption and venality.

Much more dangerous to the security of the republic was the Boulanger agitation which began about 1885 and did not end until 1891. Boulanger was a general in the French army, by nature aggressive and unscrupulous, with a zest for publicity. Incidentally he was master of all the arts that demagogues know how to use,

Five episodes in French politics during this period:
1. The Wilson scandal (1886).

The ousting of Grévy.

2. The Boulanger agitation (1885-1891).

and although flabby and sentimental he managed to acquire an immense popularity. The crowds began acclaiming him everywhere.

The general's historic rise.

Boulanger first leaped into the newspaper headlines as an ardent jingo and militarist. His chief assets were a uniform, a black horse, a blond beard, and a ready tongue; but his popularity caused him to be taken into the Freycinet cabinet as minister of war (1886). Thereupon he startled the world by suggesting that France should actively prepare for a war of revenge against Germany. "*Le général de la revanche*," he was at once dubbed by his million admirers. Apart from the flagrant impropriety of this Boulangist proposal, emanating as it did from a minister of war, there was the obvious fact (obvious to all intelligent Frenchmen) that a single step in any such direction would have meant suicide for France. Germany would not have waited until France could make ready for a war of revenge. That has never been the German way of doing things.

His pose as a martyr.

So the Berlin authorities lost no time in branding Boulanger as a menace to the peace of Europe and virtually demanding his exclusion from the ministry. The French government had no option but to accede, whereupon Boulanger was able to pose as a martyr to republican cowardice. The monarchists of all stripes flocked to his support, for they were anxious to see the Third Republic overthrown and did not much care who accomplished it. It was their plan to use him merely as a *démolisseur*, not to set him at the head of a new government. The Radicals, attracted by Boulanger's demagogic promises, joined him also. He also sought to take the clericals into camp, and in some measure succeeded. Thus he found himself at the head of a strange political ménage comprising extremists of both the Right and the Left—the ends against the center.

His success at the polls.

With this combination behind him Boulanger became, in 1888, an anti-ministerial candidate for election in several of the departments. (At this time, it will be recalled, elections to the Chamber of Deputies were conducted under the plan of *scrutin de liste*, or general ticket.) The ministry retaliated by removing him from the active list of the army and a battle-royal was on. Boulanger proclaimed himself a revisionist, and demanded that the constitution be overhauled.¹ For the moment it looked as though "*le brave*

¹ His plan for changes in the constitution was never elaborated in detail, but it included a single chamber, increased powers for the president, and the use of the referendum in ratifying laws.

général" might become dictator of France, for he managed to stampede the electorate in one department after another and get himself elected by large majorities. Whenever a vacancy occurred in any department he would forthwith resign his seat and become a candidate, always with the same triumphant result. In January, 1889, he carried the Department of the Seine, in which Paris is located, and then openly challenged the ministry to hold a general election.

This victorious march of a crusader on horseback naturally caused the Moderate Republicans to become greatly alarmed and they took drastic steps to deal with it. More particularly they abolished the plan of election-at-large and restored the district system, with a provision that no one might be a candidate in more than a single district. This put an end to the general's unbroken series of victories at the polls, but it would hardly have availed to crush the whole movement had it not been for Boulanger's own indiscretions and errors of judgment. By saying and doing many foolish things he soon diminished his hold on the populace, and his star went on the wane as rapidly as it had risen. The ministry, being thus encouraged, tried to hale him before the Senate for impeachment. But the hero of the ballot box did not wait to face his accusers; he fled to Belgium where he dealt with his own hand a final blow to the agitation by committing suicide in 1891. Nevertheless, the menace to the republic was a serious one while it lasted. There were times during the late eighties when this pinchbeck Caesar, if he had possessed the ability and the nerve, might have seized the government and made himself master of it by a coup d'état, as Louis Napoleon had done in 1851; for he had the army with him. As it was, he anticlimaxed into oblivion.

His collapse
and end.

The third stormy petrel of French politics during the closing decades of the nineteenth century was Ferdinand de Lesseps, the promoter who planned and built the Suez Canal. Having finished this great waterway to the Orient, he sighed for a new world to conquer. So De Lesseps promoted a company to construct a sea-level canal across the isthmus of Panama. Then ensued an orgy of frenzied finance. Shares in the new company were eagerly bought by thousands of Frenchmen, but much of the money was wasted before any real progress in digging the canal had been accomplished. When rumors of this mismanagement began to be noised around, the officials of the company attempted to hush them

3. The
Panama
Canal
muddle.

up by subsidizing newspapers and bribing members of parliament. To no avail, however, for the whole enterprise went bankrupt, and although strenuous attempts were made to refinance it they proved abortive.

Its effect on
the govern-
ment.

Thereupon the shareholders demanded an investigation and the government unwisely tried to conceal the true state of affairs, but a probe could not be avoided and in the end a sordid story of chicane and corruption was laid bare. The evidence connecting senators and deputies with this corruption was not altogether conclusive, but suspicions and innuendo made up for what was lacking in testimony, and several statesmen in both the Moderate Republican and the Radical groups found themselves under a cloud. Public confidence in the integrity of French politics was badly shaken. The Extreme Right endeavored to make political capital out of the mess, and to some extent succeeded, but the election of 1893 proved the Left and the Left Center to be still in control.

4. The
Dreyfus
case.

Even before the smoke of this battle had cleared away, another scandal began to loom on the horizon and it eventually gave the statesmen of France a problem of large dimensions. This was the Dreyfus case which carried its echoes around the world during the closing years of the nineteenth century. Captain Alfred Dreyfus, an officer in the army, was put on trial and convicted by court-martial in 1894 for having sold French military secrets to Germany. Dreyfus was a Jew, born in Alsace, a member of the French general staff, and intensely unpopular among his fellow officers. His conviction and sentence to exile on Devil's Island (off the north coast of South America) did not attract much attention outside army circles for the moment, but presently rumors began to be noised around and Émile Zola, the novelist, came forward with the definite charge that Dreyfus had been "framed" and railroaded to penal servitude in order that suspicion might be diverted from some non-Jewish officers who were the real culprits. This accusation, coming from so conspicuous a source, naturally created a great public commotion and before long the Dreyfus case, with its Semitic and anti-Semitic implications, was convulsing France from the Channel to the Mediterranean.

Dreyfus-
ards and
anti-Drey-
fusards.

There were charges and countercharges, investigations and interpellations, hearings and rehearings. The whole country split itself into Dreyfusards and anti-Dreyfusards, the former including the Jews, the intelligentsia, the socialists, the radicals and many

moderate republicans. On the other side were most of the clergy, the army officers, the jingoes, the Jew-baiters of all varieties, the conservatives, and the monarchists. As the controversy passed through its various stages it toppled ministries, wrecked political ambitions by the score, and had something to do with causing one president to resign. In the end Dreyfus was retried by court-martial and again convicted, but the President of the Republic, on the advice of the ministry, granted him a pardon. Later the court of cassation annulled the verdict of the Rennes court-martial, whereupon Dreyfus was reinstated in the army, promoted, and given membership in the Legion of Honor.

The outcome of the Dreyfus affair put the shoe on the other foot. It discredited the monarchists. Moreover it welded the Republican Left and the Socialists into a bloc which remained intact for many years. Someone ought to write a book on these four horsemen of the French political arena. It is not right that biographical volumes should be restricted to men of success and achievement alone. The troublers in Israel should have their day in court on the printed page, for their careers are often most instructive. Wilson, Boulanger, De Lesseps, and Dreyfus—a biography of these four would be a history of party politics in France during the last fifteen years of the nineteenth century.

Effect of the case on French politics.

With the arrival of the twentieth century, however, France appeared to be enjoying a rest from political scandals. But it was not long before a new question arose to accentuate the bitterness of partisan controversies. In reality it was not a new question, but an age-old one, one of the oldest in history, the question of the relations between church and state. It went back to the days of Guelfs and Ghibellines, Ultramontanes and Gallicans. France had wrestled with this issue on many previous occasions, but it now came forward in a somewhat different form.

5. The quarrel with the Church:

The genesis of this conflict dates back to the days of the Great Revolution or even earlier. Before the revolution the Catholic Church was the established church in France; no other was recognized by the government. And the established church was very rich, having acquired great areas of land from which handsome revenues were derived, but which paid virtually no taxes. One-seventh of all the lands in the kingdom, it was said, had passed "into the dead hand" of the Church before 1789. Naturally the revolutionists looked upon this opulent institution as a fair target

Its origin and earliest stage.

for their confiscatory decrees. It was rich; its clergy were a privileged order; it was part of the old Bourbon dispensation. During the turmoils, therefore, the revolutionary authorities set upon the Church and confiscated all its lands. Then they took the clergy from under the control of the Pope and made them subject to the civil government. In their blind wrath the revolutionary leaders spared no institution that seemed to be a part of the old régime. Religion was compelled to knuckle before revolution, as in Russia at the present day.

The Concordat of 1801.

When Napoleon Bonaparte assumed the reins of authority as First Consul, however, he realized the necessity of restoring religion to its proper place in a well-organized state, and he was also desirous of establishing amicable relations with the Vatican. So he concluded with the Papacy an agreement known as the Concordat (1801). This treaty reestablished the Catholic Church in France but could not give back the confiscated lands, because these had been divided up among thousands of peasantry. It was arranged, however, that the clergy should be recognized as public officials and paid by the government. The priests were to be appointed by the bishops and the bishops appointed by the civil authorities but confirmed by the Pope. The Concordat of 1801 was a compromise which did not altogether satisfy either side but it continued in force down to the beginning of the twentieth century (1905). It determined the relations of church and state in France for more than a hundred years.

Some of its effects.

This close association of church and state had both advantages and defects, as is always the case with such alliances. In as much as the bishops and priests were public officials the politicians became their paymasters. Although this spiritual affiliation was with the Holy See, their civil responsibility was to the minister of public instruction in Paris. It was inevitable, therefore, that the Church should be drawn into politics as a measure of self-protection. That, at any rate, is what happened. And it also happened that most of the clergy became allies of the monarchists and imperialists. They were against revolution, and to a certain extent against republicanism. This was natural enough because the Church fared better under the two French empires than under any other form of rule. So long as France remained an empire or a monarchy, so long indeed as it seemed likely that the republic would give way to an empire or a monarchy, the anti-republican attitude of the clericals

was no detriment to the civil interests of the Church. But when it became apparent that the Third Republic had come to stay—then the issue of church and state entered a new phase.

During the years which immediately followed the establishment of the Third Republic, most of the clergy (and especially most of the bishops) continued to hope for a monarchical restoration. They supported MacMahon in his stroke of 1877, thereby incurring the wrath of Gambetta and the radical Republicans. In this they did not differ much from thousands of educated Frenchmen among the laity. After 1877, when all hope of a monarchical restoration had faded out of the picture, the clergy began to be reconciled to the republic, although with great reluctance. Unfortunately, however, many of the bishops and priests swung into line behind the swaggering Boulanger during the eighties, and most of them were ranged with the anti-Dreyfusards during the nineties. These misalliances greatly angered the Radicals who never ceased to repeat Gambetta's slogan: "*Le cléricalisme—voilà l'ennemi!*" The anti-clericals had two objectives in view, first, to liberate the schools from the influence of the clergy and thus to ensure that the children of France would not acquire any "unrepublican ideals"; second, to relieve the public budget from the burden of paying the salaries of the clergy.

The Church in the early years of the Third Republic.

At the beginning of the twentieth century the radical parties, as it happened, came into power, and they were not long in forcing their anti-clerical program to the front. Their first move was not, ostensibly, the inauguration of a new policy; it simply consisted in ordering the enforcement of various laws relating to religious associations which had long been honored in the breach. There were many religious associations in France which were not complying with the existing legal requirements. They were accepting bequests, for example, without warrant of law. Some of those connected with the religious associations, moreover, were politically active. "There are too many monks in French politics," said Waldeck-Rousseau, the prime minister, as he ordered the laws to be rigidly enforced.

The Radical drive against clericalism (1900-1906).

In connection with the enforcement of these laws against unauthorized religious associations an investigation was also made, and this inquiry led to the enactment of the Associations Law of 1901. In brief this law provided that every religious association must obtain an official permit or be forthwith dissolved. Members

The Associations Law (1901).

of religious orders were forbidden to give any form of secular instruction. The state was determined to secure direct control of all the schools. These laws stirred up a hornet's nest, of course, but the ministry did not retreat. It proceeded to enforce the new law with even more rigor than the clericals had feared. Petitions for recognition were denied to religious associations in numerous instances and hundreds of them had to go out of existence or leave the country. One might have expected a revulsion in popular sentiment to follow this severity, but the general election of 1902 gave the Radicals a renewal of their majority in the Chamber and emboldened them to still more drastic action.

The breach with Rome (1904) and the Separation Law (1905).

First they broke off diplomatic relations with the Vatican (1904). Then they proceeded to abrogate the Concordat, in other words to cut the church and state asunder. A Law of Separation was drafted, enacted, and put into operation in 1905. This law proclaimed the gradual withdrawal of the government from all financial obligations to the Church and set it free to manage its own affairs, including the appointment of bishops, without civil interference. This latter provision of the law would have been hailed with satisfaction by the clericals had it not been accompanied by the stipulation that the church would get no money from the public treasury. The Separation Law also provided that all cathedrals, churches, and other ecclesiastical buildings should hereafter belong to the government, but that congregations might use them free of charge. The management of this property was to be vested in lay corporations (associations cultuelles) which were to be organized in every parish.

Clerical opposition to the Separation Law.

Quite naturally the Holy See and the clerical party in France protested strongly against these changes. The Pope, in an encyclical to the French bishops condemned the law, especially the provision which placed lay corporations in charge of church property. He also denounced the Separation Law as a violation of an international agreement and a breach of good faith, in that it abrogated the Concordat of 1801 without either negotiations, consent, or compensation. But the government did not recede and at the general election of 1906 the voters endorsed its attitude by reëlecting a large majority of socialists and radicals who were committed to a firm execution of the law.

Outcome of the conflict.

The Radical bloc held its own in France down to the eve of the world war. It disclosed no substantial weakening in its anti-

clerical attitude during that time. But when the great emergency came so suddenly upon France in 1914 there was an immediate adjournment of all partisan animosities, and a coalition of all the leading parties was hastily formed under the name of the Union Sacrée. This coalition was naturally less hostile to clericalism than the Radical ministries had been and the same was even more true of the National bloc which succeeded this war coalition in 1919. While this National bloc remained in power, from 1919 to 1924, therefore, some progress in the restoration of cordial relations between the church and state was made. France and the Vatican resumed diplomatic relations in 1921,—by executive order, not by law. The ministry, during these years, did not venture to propose either the repeal or the modification of the laws, but it somewhat relaxed their enforcement. Where concessions to strong clerical sentiment could be made without changing the laws, it made them. On the other hand the clericals were made to come halfway. They were forced out of their conservative embattlements to a position where, in their own defense, they had to become champions of such democratic principles as freedom of worship, freedom of speech, and the right to hold property.

France is a Catholic country. Some Americans may wonder, then, why the French people should countenance any form of warfare upon the ancient Church. But those who try to understand the Frenchman's point of view will have no occasion for astonishment. Apart from those nominal Catholics who are free-thinkers in fact, the majority of the French people are faithful to the Church of their fathers so far as spiritual allegiance is concerned; but they do not concede that this requires them to support an alliance which is bad for both religion and politics, namely the union of church and state. They want the Church kept out of politics and politics out of the Church. In the United States the separation of church and state is taken as a matter of course. It is enjoined in the national constitution. The separatist tradition has hardened in the United States; it is believed to be in the best interests of both sides, and it could not now be altered by any political party or group of parties. In the sense that France is a Catholic country, the United States is a Protestant country; but let anyone propose a Concordat by which all the Protestant clergymen of the United States should be put on the government payroll, as public school teachers are, and all the churches maintained by the state, as state universities

The whole
problem
from an
American
point of
view.

are—we would think rather poorly of his political sophistication. The Catholic Church in America is not only more virile, but relatively more influential than it is in France, largely because it is not tied up with the civil government in any way.

The growth
of socialism:

1. During
the nine-
teenth cen-
tury.

Another significant development of the past forty years in French politics has been the growth of the Socialist party. There were some socialists in France as early as the Revolution of 1789 and during the first half of the nineteenth century their numbers seemed at times to be growing rapidly,—in 1848, for example, when they took a considerable share in establishing the Second Republic. But this republic proved to be a mere interlude, and during the Second Empire the socialists were hounded out of the land whenever they showed themselves. With the fall of Napoleon III, however, they once more came out into the open and renewed their activities, but had to make headway against a very hostile public opinion because public opinion blamed them for the excesses of the Commune, an abortive attempt to establish communism in Paris immediately after the surrender of the city to the Germans in 1871. Many leaders of the Socialist party were banished from the country by the Republicans during the reaction which followed this lurid attempt of Louis Leblanc to do in Paris what Lenin did in Moscow some thirty-seven years later.

The split in
its ranks.

Socialism did not achieve its first notable success in France until it captured the trade unions during the late seventies. This was not an altogether unqualified triumph, however, in as much as the unions contained men of widely varying opinions. Some were not socialists at all; some were socialists of a very mild type; some were extremists. No unity among those who called themselves socialists seemed to be possible. In the early eighties Clemenceau deserted their ranks and with his followers set up the Radical Socialist party. Curiously enough, this party was less radical than the one he had left. It is one of the anomalies of French political nomenclature that the Radical Socialists have always been more conservative than any of the other socialist groups.

The Mille-
rand episode
(1899).

Some years later another important schism took place. This time the outstanding difference of opinion related to the question whether a good socialist could enter a bourgeois ministry and continue to be a good socialist. The issue came to a crux in 1899 when Millerand, one of the prominent adherents of the party, accepted a post in the Waldeck-Rousseau cabinet, whereupon the regular

socialist forces ranged themselves once more into two camps—those who favored his participation and those who did not. The latter carried the day and set up a rule forbidding their members to participate in ministries with non-socialist parties. They also agreed upon a set of regulations for the guidance of the party in selecting candidates. This faction now took the name of United Socialists and definitely allied themselves with the Second Internationale.¹ But a considerable minority—including such leaders as Viviani and Briand—declined to accept this decision. They and their followers seceded, and ultimately coalesced their forces (1910) into a party known as the Republican Socialists.

During the past twenty years, accordingly, there have been three large socialist groups in the French Chamber of Deputies, namely, the Radical Socialists, the United Socialists, and the Republican Socialists. These names are all misleading. The United Socialists, or Socialist party, are no more unified than either of the other groups; it is merely that they stand farther to the Left, in other words they are more radical than the others. They count among their leaders such parliamentarians as Léon Blum, Paul Boucour, and Ferdinand Bouisson, the last being president of the Chamber of Deputies. The Republican Socialist group is made up of deputies who adhere to socialism of a less extreme stripe, such as Jean Hennessy; while the Radical Socialists are the least radical of all. In addition there are the Communists who split from the other socialists in 1920 and joined the Third Internationale. They have a small (but noisy) group of members in the Chamber.

The present
socialist
groups.

In the French Chamber of Deputies, as at present constituted, there are now at least nine principal groups or party factions. This does not mean, however, that there will be the same number a year hence, or that they will be known by similar names. Some of these party groups are frail flowers that bloom in the spring and are gone before autumn comes. Both the personnel of the groups and the party names are continually changing. In France the name of a political party is not a tradition but a slogan. It is coined to fit the moment.

Party-
groups as
they stand
to-day.

Go into the gallery of the Palais Bourbon, where the sessions of the Chamber are held, and look down upon the great semicircle. At the extreme Right of the tribune are the royalists and other

How they
are seated
in the
Chamber:

¹ For an explanation of the Second and Third Internationales, see chap. xxxix.

1. The
Right.

members of the *Action Française*; they now prefer to call themselves Conservatives or Nationalists or Independents. But they form a very small group and count for almost nothing in the Chamber, although they are well organized outside. Léon Daudet is the most conspicuous leader of this intrepid rearguard. Next come the adherents of the *Action Libérale Populaire*, forming the clerical group, and various other conservatives. Together they are known as the Republican National Alliance, which is a federation of groups, not a single group. Alexandre Millerand, a former President of the Republic, is its outstanding leader, although he is still nominally a socialist. Passing further to the right center there are several bourgeois factions with varying degrees of liberalism. Each of these groups has its own appellation, which is quite meaningless to an outsider because the French political vocabulary has long since parted company with the dictionaries. There are Progressists, Republicans of the Left, Republican Democrats, and Radical Democrats. Together (when they get together) this is the aggregation which Raymond Poincaré, also a former president, serves as the best-known leader. This *Union Républicaine-Démocratique*, to give its rather comprehensive cognomen, is liberal in its attitude toward economic and social reforms, but not collectivist.

2. Right
Center.

3. Left
Center.

4. The Left.

Further to the Left are the Radical (moderate) Socialists, with Edouard Herriot, former prime minister, as one of their most prominent leaders; then come the Republican Socialists, or French Socialists as they sometimes prefer to call themselves, which is the group to which Aristide Briand, another ex-premier belongs; then the United Socialists, and finally the Communists. The last-named group, with about a dozen members in the Chamber, constitutes the extreme Left. It is a wise prevision, in the interests of orderly proceeding, which keeps these Communists and the Ultra-Conservatives seated as far apart as possible. Wholly outside all the foregoing divisions, moreover, are smaller groups calling themselves by such various names as Christian Democrats, Popular Democrats, and even "Non-Inscrits." Finally there are the Syndicalists who form an element in the country but are not represented at the extreme Left in the Chamber because they are opposed to political action.

5. The ex-
treme Left.

Necessity of
coalition.

Let it not be supposed, however, that all these parties act independently and play themselves off against one another separately. No one of them ever controls a majority in the Chamber, hence

coalitions are absolutely essential for carrying on the work of government. During the past ten years, moreover, there has been a well-defined tendency for all the parties except the extremists of the Right and the Left to coalesce into two opposing blocs. This tendency has been accentuated as a result of the war. On the day after Germany declared war on France the President of the Republic issued a call for unity in the Chamber, for the sinking of all political differences. Let France, he said, "stand before the enemy united by a common political faith." This call met with a prompt and patriotic response. All political factions laid aside their animosities and joined forces in the great bloc which came to be known as the Sacred Coalition (Union Sacrée). They agreed to support the Viviani ministry which was enlarged to include representatives of every party except the extreme Right. A year later Viviani gave way to Briand as prime minister (October, 1915), and the new ministry included members of all the parties, including even one member from the monarchists. But no such union of all the factions could long endure. Party politics could be adjourned, but personal animosities could not. By 1917 the left-wing Socialists had become dissatisfied with the coalition and most of them left it. The Clemenceau ministry, which finished the war and negotiated the peace, contained no members from that branch of the Socialist party.

The parliamentary history of this period showed that the bourgeois parties could combine and hold together. At the conclusion of the war, accordingly, steps were taken to make such a coalition permanent by combining the middle (or Right and Left Center) groups into a coalition as the National bloc. Such a combination was effected and it carried the Chamber at the general election of 1919. For the next five years, moreover, this bloc held fairly well together. But the welding of the middle parties into a national coalition virtually forced similar action by the factions which stood further to the Left. These, accordingly, combined into a Bloc des Gauches and the election of 1924 was fought between the two coalitions. The Left bloc was victorious at this election and held the reins of power, although at times rather tenuously, until the election of 1928 when it lost part of its strength. Poincaré, leader of the old National bloc, then became prime minister and undertook to stabilize the currency, which seemed to be the most urgent problem of the day. Later he gave way to Briand whose task it was to solve various diplomatic problems. Briand was

The post-war blocs:

Bloc National and Bloc des Gauches.

presently succeeded as prime minister by André Tardieu, who held himself in power for a time by conciliating the middle groups on both sides but was compelled to resign in the closing days of 1930 by an adverse vote of the Senate. Tardieu's successor was Senator Steeg of the Democratic Left who took the post after two other leaders had tried to form a ministry and failed.

A blurred picture.

Now if the foregoing paragraphs leave a blurred picture in an American's mind it is because no picture that is clear would be a true likeness. The names of the different groups are not the same in the Chamber and in the Senate, nor do they in either House correspond to the organized parties in the country at large. A French deputy may call himself a Conservative, as Léon Daudet does, and yet be a revolutionist—as all French monarchists are. A Frenchman who calls himself a Liberal is often a standpatter when judged by all the usual tests, while a French Radical, more commonly than not, is merely a trimmer, without the courage to be a Socialist on the one hand or a Conservative on the other. Moreover, when a deputy is chosen at the polls as a member of one faction he may quickly affiliate himself with another group in the Chamber. Unless he is an orthodox Socialist or a Communist he is under no obligation to stay where he is put. "To what party group do you now belong?" a deputy was asked by one of his voters a few months after the election. "Radical-Socialist, the same as you elected me," he replied. "You don't say so," was the retort. "Then you are making no progress at all!"

Can French political parties be defined?

We speak of these various elements as "French political parties" because the English language gives us no other convenient term to use. But they are something more than factions, something less than parties, a sort of halfway between. They are precisely what the French call them—"groupements," in other words groups of elected representatives who bear some sort of label, who may or may not be supported by regular organizations among the voters, who may or may not be pledged to some definite program, who may or may not have a leader who leads them, who may or may not be subject to party discipline, and who may or may not have the same label six months hence. If anyone can frame a definition of a French political party under such conditions he is welcome to the task.

Some of them can.

Nevertheless it is true that some French party organizations bear a superficial resemblance to the organizations which we call polit-

ical parties in the United States, for they have a nation-wide following; they have national committees, campaign funds, party platforms, and recognized leadership. They try to maintain discipline in their ranks. This is certainly true of the United Socialists or Socialist party. But others have none, or almost none, of these party earmarks. The groups of the Right and Right Center, for example, have no national organization at all; each deputy depends for his election upon his own efforts, and the members of his group are pledged to no definite program although in the Chamber they usually vote together. Some of the smaller groups are pledged to men rather than to programs or principles. There were *Clemencistes*, so long as the Old Tiger was in politics; to-day there are some who, if they told the truth, are for "Herriot first, last, and all the time." Poincaré has his devotees; so has Briand. When a leader shifts his ground or his group they follow him.

Between the party-groups which are well organized in the country, and those which are not organized at all, there are all gradations of cohesion and discipline. In some cases the deputies are responsible to party organizations or federations in their own sections of the country (departements), but not to any control or direction in the country as a whole. In other cases they profess fidelity to some national body or program, but practice it only when it suits them. Strict partisan regularity, as we understand it in the United States, is not the rule in France. Most French deputies are not looked upon as insurgents when they fail to obey the crack of the party whip. In his election campaign the deputy makes all sorts of promises, and he keeps on making them after he is elected; but neither conscience nor party discipline is adequate to make him carry them out. It reminds one of the way Frenchmen sing the rousing Marseillaise, chanting *Allons* and *Marchons* at the top of their lungs but never moving a step forward.

In the Congress of the United States one cannot vote regularly with the Democrats and nevertheless remain a member of the Republican party in good standing. He will be branded as an insurgent, a mugwump, a wild ass of the desert. The regulars will try to encompass his defeat at the next election. In the British House of Commons a Conservative who regularly voted with Labor would be placing his political future in something more than jeopardy. But in the French Chamber of Deputies no stigma attaches to the man who changes his mind, his vote, his group, or

Not many
party regu-
lars.

An Ameri-
can con-
trast.

his party—unless he is an orthodox Socialist or a Communist, in which case the offense would never be forgiven by his comrades. Party regularity is tightening up in France, however, for French politicians are learning (as Americans have long since learned) the value of a well-oiled machine on election day. The leaders of the middle parties are beginning to realize that Socialism and Communism cannot be effectively combatted by the methods of guerilla warfare. In a word the French political parties are becoming slightly Americanized.

Leaders,
caucuses,
and organs.

Each group in the Chamber of Deputies is supposed to have its leader or leaders. Each holds a caucus occasionally; but the decisions of the caucus do not bind the members. Each group (if it has fourteen members or more) is represented, in proportion to its strength, on all the regular commissions, or standing committees of the Chamber.¹ Since the members of each group are seated closely together in the Chamber they usually develop bonds of personal friendship, although some rivalries and jealousies also develop within the ranks, because every group wants to be an all-star cast and bargain its prestige for representation in the ministry. Each group of any importance has its own newspaper organ, and sometimes several of them. Thus the *Action Française* is Extreme Right, and royalist. The *Echo de Paris* is Conservative, and so is *Figaro*. The *Journal des Débats* is Right Center and so is *Intransigeant*. *L'Œuvre* is Radical Socialist, the *Petit Bleu* is Left Center, the *Ère Nouvelle* (Herriot's organ) is Republican Socialist, while *Populaire* is the Socialist party organ. *L'Humanité* is the Communist journal. A few French metropolitan newspapers are independent, or profess to be,—for example, *Le Temps* and the *Petit Parisien*.

Practical
politics in
France.

Having got himself elected to the Chamber, the deputy's next job is to keep himself there. He must cultivate his own constituency by an unremitting attention to the interests of his supporters at home. For it will avail him nothing to keep the favor of his party leaders if he loses that of his own arrondissement. So he goes home every week-end, if he can, and works to keep his fences up. He counts upon the prefect for a benevolent neutrality at least, and for active support if he can get it. He labors to build up a personal machine, with key-men (usually job holders) in the vital spots. He must be much in evidence at local public gatherings and

¹ See p. 470.

his name must get into the newspapers regularly. "When the papers stop talking about you, you're a dead one." The French deputy realizes it as well as the American congressman.

No French statesman of the past twenty-five years has been the recognized leader of a majority in the Chamber of Deputies in the sense that Disraeli and Gladstone, or even Asquith and Baldwin, were leaders in the House of Commons. No one has ruled the Chamber as Thomas B. Reed and Joseph G. Cannon ruled the American House of Representatives in their day. This is because there can be no great leaders unless there are faithful followers. It is only among the United Socialists and the Communists, strange to say, that the realities of leadership are strictly insisted upon in the French Chamber. Strange, because these are the groups whose political philosophy is most averse to the exalting of one man above the other. The various groups in the Chamber have no whips as at Westminster and at Washington, no party bosses as at Albany or Harrisburg, and no members of the "Third House" who haunt the lobby telling the deputies how the farmers or the manufacturers or the labor organizations want them to vote. The American political parties call themselves Republicans and Democrats; but their control is neither republican in form nor democratic in fact. It is monarchical and oligarchic. A French group may call itself royalist, but in organization and control it goes on the principle that all politicians are equal in the eyes of the law and the prophets. Nothing riles a Frenchman so much as to call him a henchman of somebody else. He wants it clearly understood that he is his own boss—outside his home, at any rate.

More than thirty years ago an American writer tried to set forth what he believed to be the fundamental reasons for the disintegration of political parties in the French Republic.¹ In France, he pointed out, the Revolution of 1789 destroyed all faith in the political traditions of the past, but did not succeed in establishing a new political orientation. Between 1800 and 1870 six different forms of government trod closely on one another's heels, no one of them lasting long enough to acquire a firm grip on the faith of the people. Under each of these six political systems there remained many irreconcilables, that is, people who did not believe in the existing constitution but wanted to change it into something

Many little leaders and few great ones.

Why France has so many parties:

1. The lack of continuity in French political history.

¹ A. Lawrence Lowell, *Governments and Parties in Continental Europe* (Boston, 1897), Vol. I, pp. 104-142.

entirely different. Under a monarchy, the republicans tried to sabotage the mechanism; under a republic the monarchists did the same. Both, in their turn, threw sand in the gears. To-day, it is the Communists who are trying to stall the engine.

2. The lack of a "consensus on fundamentals."

Now a reasonable degree of unanimity as to the general type of government is essential to the building of political parties. Men must at least agree upon the fundamentals. The party system, as we have it in England and in America, takes for granted that an overwhelming majority of the electorate is satisfied with the existing form of government,—a monarchy in the one case and a republic in the other. The parties merely differ as to the best methods of conducting the government under the existing form. But in France, until the past forty years or thereabouts, there has been no consensus on the form of government. It is only within the last four decades that the French people have approached universal agreement on one fundamental point, that is, the superiority of a republican form of government. There has been unanimous consent on that matter among the people of the United States for nearly a hundred and fifty years. French political parties have been deficient in cohesion because French political history has lacked sequence. "Even to-day," says Siegfried, "the French Revolution has not been accepted by everybody."¹

3. Clericalism and Socialism.

Clericalism and socialism have also been, to a degree, responsible for the outcome. They have cut across party lines and have broken them. Clericalism never attained its full measure of strength in France because it was constantly under suspicion by reason of its too intimate relations with the royalists and the ultra-conservatives. Yet it has helped to disintegrate the Right. Socialism, on the other hand, has helped to disintegrate the Left. It would not be a factor in party decentralization if all who call themselves socialists could agree and unite; but in France they have been unable to do so. They have contributed three groups to French politics. Instead of unifying a large element in the electorate, socialism has split the socially-minded asunder.

4. The spectre of revenge.

Then there is the old issue of *revanche*, now happily out of the way for the moment. No Frenchman, however, pacifically inclined, ever accepted the wrong done to his country by the filching of Alsace-Lorraine in 1871. No red-blooded son of France, for nearly fifty years, ever ceased to think of that injustice and

¹ *France; A Study in Nationality* (New Haven, 1930), p. 27.

to harbor the messianic hope that some day a leader of the people would come forth to set it right. This frowning, fist-clenching spirit seethed beneath the surface of French politics for almost half a century, even when everything looked placid above. It was a disturber like the issue of "freedom for Ireland" which muddled British politics for so long a time. The basis for the issue is now gone in both cases; but in both of them a feeling of unforgiveness and distrust holds on.

A fifth reason for party disintegration may be found in the French temperament. National temperament is a compendious alibi that can be used to explain almost any eccentricity in government. Yet it is a rather notorious fact that the majority of the Frenchmen, unlike the majority of Americans and Englishmen (not to speak of Irishmen) have relatively little interest in politics.¹ This is particularly true of the small farmers who make up half the total population. The French peasant will work himself into paroxysms over some real or fancied private grievance (such as a trespass on his little farm), while the townsman will induce apoplexy by the fervor of his interest in the question whether some little side-street shall be named Rue Doumergue, or Place Poincaré. But great controversies on matters of public policy often leave both of them unperturbed. It takes something more than a commotion in the Folies-Bourbon (as he nicknames the Chamber) to ruffle the serene disregard of the average bournat for happenings outside his own community. He does not learn much from generation to generation,—and he forgets nothing. "We don't like the English," said a French peasant to an American officer during the great crusade of 1917-1918,—"they behaved very badly during the Hundred Years' War"!

5. The French temperament.

With the dweller in the large cities it is of course somewhat different. He is more interested in politics as such; he is not so indifferent as the *paysan*, but he is just as individualistic. He reacts against doing as other men do. He wants to be his own mentor in politics. Political independence is to him a self-evident virtue; by its exercise he demonstrates that he is as good as any other man. So he would rather vote for a leader than for a party or a principle, a policy, or a program. He desires to fit every issue into

Town and country.

¹ They are accustomed to display, as one writer puts it, *beaucoup de chaleur dans la discussion des intérêts privées, et de calme dans celle des intérêts publics.*"

a *grande politique* of his own. This clearly independent spirit of the French people, both in country and town, does not lend itself to a system in which political parties are firmly organized and strictly disciplined. The average Frenchman goes seeking for some political issue on which he may differ from his fellow citizens rather than for one on which he and others may unite.

France
among the
nations.

Still, if one looks back over the course of European history during the past fifty years the political parties in the French Republic have not given the parliamentary régime a bad record. France, during this half century, has maintained domestic tranquillity, developed a fine system of public education, attained a high and evenly-distributed economic prosperity, enlarged her colonial empire, fought a great war successfully, redeemed her lost provinces, reconstructed her shell-torn areas and made herself a dominating factor in the new League of Nations. "Did there ever appear on earth," asks Tocqueville, "another nation so fertile in contrasts, so extreme in its acts, more under the dominion of feeling and less ruled by principle . . . so fickle in its daily opinions and tastes that it becomes at last a mystery to itself . . . endowed with more heroism than virtue, more genius than common sense . . . the most dangerous nation of Europe, and the one that is surest to inspire admiration, hatred, terror, or pity—but never indifference?"

6. The system of parliamentary procedure.

Finally, the crumbling of parties in France has been due, in part at least, to certain features of parliamentary procedure, notably the older plan of organizing the committees in the Chamber, the interpellation, and the practice of putting government measures in charge of reporters rather than of ministers. Of course it may be suggested that these things are not the causes of party disintegration but the results of it. And there is some force to that contention. It is like trying to determine the cause-and-effect relation between crime and poverty. Each is a cause, and each is also a result of the other. Interpellations help to keep the parties in flux; but if any single party could become strong enough to command a clear majority in the Chamber the interpellation procedure would be of very little consequence. So with the practice of placing reporters instead of ministers in charge of government measures when such bills are being debated. This divides responsibility and weakens leadership. Ostensibly the reporter is leading the Chamber, but his leadership is far from being akin to that of a minister when he takes

charge of a government measure on the floor of the House of Commons. Still, if other things made for party solidarity, as they do in England, the French system of divided floor leadership would not stand in the way.

Most Americans assume that the two-party system is preferable to any other. They may be right, but it is by no means certain. A multiple-party system means divided responsibility and lawmaking by compromise—both of which many people look upon as things to be avoided in government. They prefer concentrated responsibility and lawmaking by a disciplined party majority in Congress. But unified responsibility sometimes shades into four years of presidential or ministerial dictatorship while lawmaking by the crack of the party whip is too often a synonym for majority despotism. Two party-groups in a parliament or congress do not, and cannot, reflect all the differences of opinion that arise among the voters; it sometimes requires seven or eight party-groups to do it even fairly well.

Lawmaking and the determination of public policy under the multiple-party system must proceed by compromise; but it is yet to be demonstrated that lawmaking by compromise necessarily gives less satisfaction to the country as a whole. The first and best piece of legislation ever put upon the statute book of the United States, the federal constitution, was the outcome of a great many compromises—between north and south, between big states and little ones, between federalists and anti-federalists, between seaboard and hinterland. The system of checks and balances, which this constitution established, ensures a certain amount of lawmaking by compromise even when a political party controls Congress, for there is the President's veto power to be reckoned with. But France has no network of constitutional checks and balances. She gets the same end by her multiple-party system.

Is party decentralization an evil?

Lawmaking by compromise.

The most systematic treatise on the subject of French political parties is Léon Jacques, *Les partis politiques sous la troisième république* (Paris, 1913). Smaller and more recent surveys, of real value, are F. Corcos, *Catéchisme des partis politiques* (Paris, 1928) and Jean Carrère and Georges Bourgin, *Manuel des partis politiques en France* (Paris, 1924). Raymond L. Buell's *Contemporary French Politics* (New York, 1920) contains an interesting discussion of party organization, aims, and problems. Mention

may also be made of a useful booklet by R. H. Soltau, entitled *French Parties and Politics* (London, 1922). There is an interesting chapter on the subject in E. M. Sait's *Government and Politics of France* (New York, 1920), pp. 327-379.

On the Boulanger episode see A. Mermeix, *Les coulisses du boulangisme* (Paris, 1890). The Panama scandal is elucidated in Quesnay de Beaurepaire, *Le Panama et la république* (Paris, 1899) and in G. de Belot, *La vérité sur le Panama* (Paris, 1889). The monumental work on the Dreyfus case is J. Reinach, *Histoire de l'affaire Dreyfus* (4 vols., Paris, 1924). For the opposing side of the case the best book is Dutrait-Crozon, *Précis de l'affaire Dreyfus*. There is also an English translation of the autobiographical account: Alfred Dreyfus, *Cinq années de ma vie* (Paris, 1901).

On the question of church and state a well-known volume is that of Paul Sabatier, *Disestablishment in France* (Paris, 1906). Antonin Deboudour, *L'église catholique et l'état sous la troisième république, 1870-1906* (2 vols., Paris, 1906-1909) is anti-clerical. The other side is set forth in L. R. P. Lecanuet, *L'église de France sous la troisième république* (3 vols., Paris, 1930).

The rise of socialism in France is dealt with in Alexandre Bourson (A. Zévaès), *Le socialisme en France depuis 1871* (Paris, 1908) and in J. Jaurès, *Studies in Socialism* (London, 1906).

On the broader aspects of French political and social life there are some interesting books, e.g., Albert Guérard, *French Civilization in the Nineteenth Century* (London, 1914); Sisley Huddleston, *France and the French* (2 vols., New York, 1925); Barrett Wendell, *France of Today* (Boston, 1907); André Siegfried, *France; A Study in Nationality* (New Haven, 1930); Carleton J. H. Hayes, *France: A Nation of Patriots* (New York, 1930); and Lindsay Rogers, *The French Parliamentary System* (New York, 1931).

CHAPTER XXVII

FRENCH LAW AND LAW COURTS

There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen.—*Lord Bryce*.

Out of the chaos which followed the collapse of the Roman empire there arose and spread over most of Western Europe a great system of political and social relations known as feudalism or the feudal system. It was an institution based upon the tenure of land. The lord gave his vassals land and protection; the vassals gave him services and fealty in return. He, too, was the lawgiver within his domain and the fountainhead of justice. The laws were his laws, the courts were his courts. "Of all the phenomena of feudalism," a distinguished student of the subject has said, "none seems more essential than seigniorial justice," that is, the administration of justice by the feudal lord or seigneur.¹ This was the very essence of feudalism and its effects were far-reaching. The student of modern government is usually aware of the fact that feudalism rose, flourished in mediæval Europe, and ultimately fell; but he does not always remember that the influence of feudalism persisted long after the system itself had passed away. France, especially northern France, was the classic land of feudalism; it was there that the system became most deeply rooted and remained unchanged in its legal phases down to the time of the Revolution.

The influence of feudalism on law.

Anyone who studies the legal history of England and of France from earliest times down to the beginning of the nineteenth century will be impressed by the striking contrast which marks the development of law and law courts in the two countries. These two nations are neighbors, with only a narrow strip of water separating them, but their respective legal backgrounds could not be more dissimilar if they were situated in different hemispheres. And the reason for this is not hard to explain. It is to be found in the fact that Eng-

In England and in France.

¹ F. W. Maitland, *Domesday Book and Beyond* (1897), p. 258.

land, at an early date, developed a royal power and a national spirit which mastered feudalism and feudal jurisdiction, gave the country a unified legal system, and established the supremacy of the royal courts.

The French *coutumes* in contrast with the English system of common law.

Feudalism was a disintegrating force. It divided the nation into principalities, dukedoms, baronies, and fiefs, each of which was an imperium in imperio. Save for a shadowy allegiance to the king, the feudal duke or count or baron was supreme within his own domain. Hence it was that every section of northern France developed its own distinct system of customary law, its own *coutume*, as it was called. These "customs," in due course, were put into written form and administered by the courts of the locality. The *Coûtume de Paris* was the most notable among these bodies of local law, but there were hundreds of others, and they differed greatly in substance, in scope, and in the areas which they covered. The legal decentralization was so great that, as Voltaire once said, a man who went across France changed laws as often as he changed horses.¹ It was not so in England. There, in the early days, bodies of local customs had begun to develop; but the centralizing power of the monarchy proved too strong and they were submerged by the rise of the common law, which was the king's law, common throughout the whole country and uniformly administered by the royal courts.

The French legal system before the Revolution.

Down to the Revolution of 1789, accordingly, there was no system of common law in France. But this does not mean that there were absolutely no rules of law which applied uniformly throughout the whole country. Superimposed upon the *coutumes* was a body of edicts, decrees, and ordinances issued by the king. As the French monarchy grew in strength during the sixteenth and seventeenth centuries it became the practice to issue elaborate ordinances on various subjects, and in the reign of Louis XIV (1662-1715) a long series of them appeared, the *grandes ordonnances* they were called. Some of these royal edicts were veritable law codes; they dealt in a comprehensive way with such matters as commerce, wills, trusts, and judicial procedure; and they applied uniformly to the whole of France. Most of these great ordinances were issued on the authority of the king alone, for no elective parliament met

¹ In the southern part of France, the *pays de droit écrit* as it was called, the principles of Roman law were more generally and uniformly applied, but even here they were somewhat modified by local custom.

in France from 1614 to the eve of the Revolution.¹ This whole body of royal legislation, however, covered only a small part of the entire field and hence did not serve to unify the legal system of the country.

Very different, it may be repeated, was the course of development in England where the legal supremacy of the crown over the whole country was asserted by William the Conqueror and made good by his successors at a very early date. The kings sent their judges on circuit from county to county; these itinerant justices presided in the county courts and gradually established uniformity in the interpretation of both customs and laws. The *Curia Regis*, in its hearing of appeals, also provided a consolidating influence. Long before the close of the mediæval period England was able to place her law and her courts on a national basis while France did not manage to do so for several centuries thereafter. To the French people this was an enormous handicap, for a common law is one of the greatest unifying forces known to human society, second only to a common language.

A contrast with England.

The leaders of the French Revolution were well aware of the weakness which this legal demoralization engendered. They knew that it constituted a barrier to the creation of a truly national sentiment, that it stood in the way of the *fraternité* which the Revolution was seeking to create. Not only this but they felt very keenly that the *coutumes* were mediæval in spirit, antiquated, out of tune with the legal requirements of a modern age. Revisions had been made from time to time, it is true; but these revisions had not changed the spirit of the laws. Revising a *coutume* was like touching up the portrait of a mediæval knight and calling him a modern captain of industry. So the revolutionists decided that these bodies of customary law must go.

The situation when the Revolution came.

In keeping with this decision the Revolutionary Assembly proceeded to abolish the greater portion of the old jurisprudence. Various general statutes, applying to the whole of France, were enacted instead. Then it seemed desirable to consolidate these new statutes, together with what was left of the old law, into a

The abolition of the *coutumes* and the promulgation of the *Code Civil*.

¹ There was a requirement that every royal edict or decree must be registered by the Parliament of Paris before it could become valid. But this body was not a parliament in any real sense; its members were appointed by the king. And if they declined to register an ordinance (as they did on a few occasions), the king could come before the *parlement* and overrule the opposition by the use of a prerogative known as the *lit de justice*.

series of codes, and the revolutionary government set its hand to this enterprise; but it was no small task and for a time very slow progress was made. This revolutionary government, moreover, had matters of much greater urgency to deal with during the closing years of the eighteenth century. Hence it was not until Napoleon came into power that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the project with characteristic energy, and completed it within a few years.

The far-reaching influence of the Napoleonic codification.

Napoleon was very proud of this exploit. During his exile at St. Helena he referred to it as the greatest achievement of his age and one that would profit France more than a score of brilliant victories. "My code alone," he said, "has done more good in France than the sum total of all the laws that preceded it." In this he was right, for the Code Napoléon has had an immense influence upon legal development in all parts of the world. It has extended its legal principles and doctrines to the uttermost parts of the earth, to regions where the tricolor never flew. The present systems of civil law in Italy, Spain, Portugal, Belgium, and in nearly all the Latin-American states are based upon it. The civil codes of Germany, Japan, Greece, and many other countries have drawn upon it heavily. It has had a greater vogue and a wider influence than the common law of England. It has perpetuated and revived much of what was best in the civil law of ancient Rome. "Its provisions," as Napoleon himself once boasted, "not only preach toleration, but organize it,—toleration the greatest privilege of man."¹

The Corsican's most enduring achievement.

The emperor did not himself do the work, of course; but he selected the jurists and gave them their inspiration. It was his driving power that put the codes into effect. They are his most enduring monument. When you go to Paris and look upon the marble cenotaph where rest the bones of this astounding man, you will see emblazoned there the names of his great military victories—Marengo, Wagram, Austerlitz, Jena, Friedland, and the rest. But you will find no mention of the greatest service that he rendered to France and to the world. It is the habit of history to make Themis yield place to Mars.

The other codes.

The Code Civil (to use its modern republican designation) was only the first of a series. Within the next half-dozen years four

¹ R. M. Johnston, *The Corsican* (Boston, 1910), p. 299.

other codes were compiled and promulgated. These codes dealt with civil procedure, criminal law, criminal procedure, and commerce. Before Napoleon relinquished his imperial throne he had established throughout the whole of France a single system of law and legal procedure. Revisions of this system have taken place at intervals, but the fundamentals remain unchanged. The Napoleonic codes were so comprehensive that they left relatively little to be covered by subsequent legislation. In France, as a consequence, there has been no such outpouring of statutes as has taken place in England, in America, and in the British self-governing dominions. This, however, is not an unmixed blessing, in as much as the codifying of a legal system conduces to rigidity. It is sometimes said that the codes have tended to stereotype the legal system of France and to take from it that quality of quick responsiveness to new economic needs which every progressive legal system ought to have.¹

This suggests reference to a distinctive feature of French law and legal interpretation. In Great Britain and in the United States the law is being constantly developed, expanded, and even altered by judicial decisions. Both these countries have built up great bodies of judge-made law. Although it is the theory of Anglo-American jurisprudence that the judges have no authority to change the law, but only to interpret and apply it, everybody knows that English and American courts do, in fact, make changes, often very considerable changes.

A distinctive feature of modern French legal development:

One judicial decision advances a little upon another, and so on year after year, until there exists a wide gulf between the law as it is and the law as it was. Simple words and phrases receive new shades of meaning, and ultimately acquire new meanings altogether. This gradual modification of the law by judicial decisions has been made possible in England and the United States by the traditional respect which the courts always render to precedent. The doctrine of *stare decisis*,—the doctrine that a court will always be guided by previous decisions unless there is a compelling reason for reversal—has resulted in giving judge-made law a definite drift and direction.

The doctrine of *stare decisis*.

But in France there is no such doctrine. On the contrary it is definitely understood that no court is under any obligation to be

Does not exist in France.

¹ Some of the American states and the British dominions also have codes—civil codes, criminal codes, and codes of procedure; but they are not so comprehensive as those of France and their provisions are constantly being adjusted to new conditions by means of judicial interpretation.

guided by its own previous decisions or even by the decisions of a higher court. Precedents may be cited in the French courts, and frequently are; but no great reliance is placed upon them, and the judges are free to disregard even the weightiest precedents whenever they feel so inclined. When a French tribunal gives a decision which directly contravenes some previous ruling, nobody says (as we do in America) that "the court has reversed itself." It has merely changed its mind or its attitude, in accordance with altered conditions, as every French court is expected to do. At the same time it is impossible for any court, in any country, to decide every case on its own individual merits, without some reference to what has already been adjudged in similar cases. The prestige of a judiciary demands that its decisions shall be reasonably consistent. It is essential to the proper enforcement of the law, moreover, that individuals shall know how the laws are going to be interpreted.

Nevertheless precedents are usually followed.

So, while the doctrine of *stare decisis* has never had any formal recognition in France, and while no great body of controlling decisions has been built up as in America, there is nevertheless a definite judicial consensus on many fundamental questions. In other words, while the courts are free to disregard precedent, they have found in the nature of things that it is easier and better to maintain a reasonable standard of consistency in their interpretations of the law. Side by side with the written provisions of the codes they are gradually building up, therefore, a small body of judge-made laws which fills the lacunæ and clears the obscurities.¹

Another distinctive feature:

No practice of declaring laws unconstitutional.

There is another feature of the French judicial system which the American student will do well to note. France has a written constitution, embodied in a series of constitutional laws, the provisions of which are in some cases very precise. And the French constitution, like the American, is ostensibly the supreme law of the land; hence any ordinary law which conflicts with its provisions is said to be unconstitutional and void. But no French court has the power to declare a statute unconstitutional and to annul it on that ground, no matter how repugnant to the constitution the statute may be. No such power is expressly given to the courts by the French constitution and it has not been acquired, as in the United States, by usage.

¹ Raymond Poincaré, *How France is Governed* (New York, 1914), p. 241.

What happens, then, if the French Parliament passes a law which contravenes a constitutional provision? Suppose it should pass a statute providing that decrees of the President may be promulgated without the countersignature of a minister although the constitution expressly stipulates to the contrary? The question cannot be authoritatively answered because the two French chambers have never yet enacted a law in direct contravention of a constitutional requirement. It has been suggested that the President of the Republic might refuse to promulgate such a law if it were passed, and thereby withhold it from going into force; but it is highly improbable that any President would assume such a responsibility. Certain it is, in any event, that no court would assume the onus of interfering—and for a reason which will be explained in the next paragraph.

A chance for controversy.

The constitutional laws of 1875 say nothing about the courts, how they shall be organized, or what their powers shall be. The whole matter is left within the jurisdiction of the French parliament to control, hence a conflict between the judiciary and the legislature in France could have only one outcome. The courts are created by law, and by law their powers could be curtailed. They might declare one law unconstitutional, perhaps, but parliament would assuredly see to it that they never did anything of the sort again. From the nature of its original authority, therefore, the French judiciary does not possess the independence, nor can it hope to develop the powers that pertain to the judiciary in the United States. It is not the habit of Frenchmen to look upon the judiciary as a separate branch of the government, distinct from the legislative and executive branches. They incline to regard the courts as mere administrative agencies, something like the post offices or the prefectures.

Why judicial supremacy cannot be developed in France as in America.

Some other general contrasts between the French and American judicial systems remain to be noted. In France all the courts are localized; the judges sit at a fixed place and never go on circuit as is the practice to a considerable extent in both England and America. In France, moreover, every court except the very lowest is provided with a bench of judges; in no higher court does a single judge give decisions. Every decision of a French court (save in the very lowest courts) must be rendered by the concurrence of at least three judges. There is an old French proverb: *juge unique*, *juge inique*, which expresses the public sentiment on this matter;

Some other contrasts between the French and American judicial systems.

but it has no justification, as the history of English and American courts has shown. A single judge is no less careful, and no less fair, than a bench of judges. On the contrary he assumes the entire responsibility for it, whereas such responsibility is dissipated when decisions are rendered by a vote of three judges against two, or of five against four.

The large number of judges.

As a result of this plural organization of the courts the total number of judges in France is very large—nearly six thousand in all.¹ In England the total number (apart from justices of the peace and stipendiary magistrates) scarcely exceeds one hundred. From time to time it has been proposed to cut down the excessive number in France by having single judges sit in the courts of first instance, but the collegial tradition has always proved too strong. Attempts have also been made to reduce the number of courts, of which there are far too many, but here again there has been opposition from the regions immediately affected. The deputies agree with the idea in principle, but not in its application to their own constituencies. It is as difficult to abolish a superfluous court in France as to eliminate an obsolete army post or navy yard in the United States.

How French judges are chosen.

In England and in the United States the judges are recruited from the legal profession. An appointment to the bench is regarded by most lawyers as the crowning stage of a successful career at the bar. In France this is not the case. Members of the French judiciary are regarded as the representatives of a separate profession, with no close relation to the active practice of the law. The young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his studies accordingly. If he chooses a judicial career he does not hang out a sign and hustle for clients when he has finished his course. He goes at once into service as a subordinate court official, sometimes without pay. Then, if he displays ability, he may become a *procureur* (official prosecutor), or a substitute judge in a court of the first instance. In time, if he earns promotion, he will become a regular judge of this court, and eventually the presiding judge of it. From this position he may be named as a *conseiller* on one of the twenty-seven courts of appeal, and if he sufficiently distinguishes himself among his colleagues there he will ultimately attain the zenith of his as-

¹ In the lower courts they are called *juges*, in the higher courts they are called *conseillers*.

pirations by donning the red robe which is the insignia of the court of cassation.

In other words, the French judiciary is regarded as a branch of the civil service for which a special form of training is required. This is quite contrary to the tradition in the United States where any lawyer is deemed fit to be a judge if he can get himself appointed or elected. There are no elective judges in France. Great as is the influence of democratic theory in the abstract, French public opinion would not countenance an elective judiciary. All judicial posts except the very lowest are filled by promotion. An elective judiciary was established during the Revolution but it proved a failure and Napoleon abolished it in 1804. No serious attempt to revive it has been made under the Third Republic. The French people are not so obtuse as to blink the fact that the effective administration of justice, as between man and man, is something that calls for specialized skill and experience. They know that these qualities cannot be regularly obtained by choosing judges at the polls. All French judges are therefore appointed by the President of the Republic on recommendation of the minister of justice. Most of them hold office for life and cannot be removed except by consent of the court of cassation.¹

The judiciary a branch of the civil service.

Most conspicuous of all differences between the French and American legal systems, however, is the separation which the former makes between ordinary law and administrative law, between ordinary courts and administrative courts. Neither in England nor in the United States is any such general separation made. It is sometimes said that France has one system of law for the ordinary citizen and another for the public official,—that the public officials are a favored class with the right to be tried by special courts and are not amenable to the ordinary tribunals. This, as will be shown in the next chapter, is not a fair way of stating the matter. The system of administrative law redounds to the benefit of the ordinary citizen and not to his disadvantage. It affords the Frenchman a measure of redress against his government which the American citizen does not obtain. The remedies which the French citizen has against his government are speedier, cheaper, and in every way more satisfactory than those which either Englishmen or Americans possess in relation to their respective governments. This is a matter that must be reserved for

The dual system of law and courts:

¹ See also *below*, p. 527.

later and more ample discussion, but it should be noted at this point that France has two distinct sets of courts, known as regular courts and administrative courts, each with its own judges, jurisdiction, and procedure.

1. The regular courts:

The *juge de paix*.

The regular courts administer the civil and criminal law. The lowest among these courts in France, as in England, are the local courts presided over by the justices of the peace (*juges de paix*). There is one such court in every canton.¹ It has jurisdiction in civil controversies where the amount involved is small, and in criminal cases where the offense is a minor one. The procedure is informal and inexpensive, much like that of the "small claims courts" which function in many American cities. The *juge de paix* spends most of his time straightening out misunderstandings. His main business is to prevent lawsuits, not to try them. In his day's routine he deals with neighborhood quarrels over land boundaries, trespass and minor damages to property, disputes between landlord and tenant, attachments on small salaries, and accidents to workmen. It is not so much a knowledge of the law as a knowledge of human nature that the French justice of the peace needs in his work.

His work.

Although this is the lowest regular court in France, it is by no means the least important. These three thousand justices of the peace handle nearly a million cases a year and it is from them that the people at large get their conception of what French justice is. Relatively few of their decisions are ever appealed. No one is eligible for appointment as a justice unless he has obtained his first law diploma or has passed a rigorous legal examination. An exception is made in the case of those who have held certain other judicial offices. The justices are paid fair salaries and are entitled to a pension on retirement.

2. Courts of the first instance:

Next come district courts, or Courts of the First Instance. There is at least one of these in every department and it is always provided with several judges, at least three and sometimes as many as fifteen. Where there are more than six judges the court may divide itself into sections or chambers. The judges sit together, one of them serving as presiding judge, and render their decisions by majority vote. They are assisted by a public prosecutor (*procureur*) who conducts the cases as is done by

¹ A canton is a judicial division of the arrondissement. There are 3019 cantons in France.

the prosecuting attorney or district attorney in the United States.

The courts of the first instance hear appeals from the decisions of the justices (where small sums are involved; otherwise the decision of the lower court is final), and have original jurisdiction in all civil controversies no matter how large the amount involved. They also have original jurisdiction in a limited range of criminal cases. But all their decisions in criminal cases, and in civil cases involving large amounts, may be appealed to the higher courts. The district courts do not use juries.

Their jurisdiction.

Then there are courts of appeal, twenty-seven of them in all.¹ Each court of appeal is also made up of a bench of judges (*conseillers*) and its jurisdiction extends over a judicial province, each of which contains from one to seven of the French departments. The court of appeal at Paris, for example, has jurisdiction over the Department of the Seine and five other departments. These courts sit in sections, each section having at least five judges, one of whom serves as presiding judge of the section. There is a civil section, a criminal section, and an indictment section (*chambre d'accusation*) which performs the functions of a grand jury.

3. The courts of appeal.

Each section of the court of appeal is assisted by one or more public prosecutors known as *procureurs-généraux*, also by various assistant prosecutors, attorneys, bailiffs, and other court functionaries. In France all these *procureurs*, *avoués*, *huissiers*, and so on, are regarded as members of the judiciary. The regular judges are known as the *sitting* judiciary, while the others make up the *standing* judiciary. This is in truth a pragmatic way of differentiating them. No juries are used by the court of appeals in any of its sections. The work is confined almost entirely to the hearing of appeals from the courts below, more particularly to the hearing of arguments on points of law. In most instances the decisions of a court of appeal are final.

Public prosecutors.

The civil procedure in these courts of appeal seems strange to an American lawyer. The case is prepared, both sides of it, by *avoués* or attorneys. They make out the complaints and replies, rebuttals and surrebuttals, for which they charge their clients a stiff fee, and which they serve on one another by means of pompous *huissiers* or uniformed bailiffs whose services are also expensive. The judge waits until the lawyers have finished this interchange of

Methods of pleading.

¹ One for Algeria, one for Corsica, and twenty-five for France.

documents and then listens to oral argument on such points as are still in disagreement. He does not see the clients, for the clients do not come into court. They may be fictitious persons so far as the judges are concerned. Sometimes they are—French versions of John Doe *vs.* Richard Roe. No oral evidence is presented in the French courts of appeal. It is all in the form of documents. When the arguments have been concluded by the attorneys the judges confer and try to reach a decision.

4. The
courts of
assize.

Serious criminal cases are tried in the courts of assize and only under certain conditions may they be carried before the criminal section of a court of appeal. These courts of assize have no jurisdiction in civil controversies; they deal with criminal cases only. There is one such court for each of the eighty-nine departments in France. Rather curiously they do not form a separate rung in the ladder of regular courts but are specially organized four times a year. The presiding judge is named from one of the courts of appeal by the minister of justice; his two associate judges are drawn either from a court of appeal or from a district court. This is the only French court which uses a jury, and it sits with a jury in practically all cases.

The jury
system in
France.

The trial jury in France (as in England and America) is composed of twelve persons chosen by lot from a panel of citizens, but its functions are somewhat different from those with which Americans are familiar. The jury system is not indigenous in France. It was transplanted from England and has never taken firm root. Frenchmen feel that trial by jury ought to be preserved as a safeguard of individual liberty, but they do not value it so highly as is done in Anglo-Saxon lands. Hence the jury system has not been overworked in France. It is never used in deciding civil controversies, but has been reserved for the trial of serious crimes only.

Does not
function
well.

Even at that it does not appear to be functioning very well. A recent writer on French government condemns the system unsparingly and declares that in many cases the courts might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." Composed exclusively of petty shopkeepers, he goes on to say, "the jury often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults."¹ This jurist stigmatizes the jury system as a sacrifice of common sense to an old Saxon superstition, and one that works

¹ Joseph Barthélemy, *The Government of France* (New York, 1924), p. 176.

havoc with the sound administration of justice. Too much weight, however, should not be given to this opinion. There are some American jurists who feel the same way, yet the advantages of the jury system in the United States far outweigh its many shortcomings.

The supreme court of France, for all ordinary cases both civil and criminal, is the Court of Cassation.¹ There is but one court of cassation for the whole of France, this centralization being designed to ensure uniformity in the interpretation of the laws. It is not a supreme court of appeal in the usual sense, because it has nothing to do with the facts of a case; its function is merely the cassation or annulment of lower court decisions which have wrongly interpreted the law.

5. The
Court of
Cassation:

The Court of Cassation sits in Paris and has a bench of forty-nine judges, including a first president, three presidents of chambers, and forty-five councillors. In addition there is a *procureur-général* and several assistants. Like the courts of appeal this highest court does its work in sections or chambers. Two chambers deal with civil and one with criminal cases.² The court of cassation has no original jurisdiction; all cases come before it on appeal from some court below. It cannot change the verdict of a lower court, but must either confirm the decision or refer the case back for a new trial. It does not, as in America, send the case back to the same court for retrial, but to a different court of the same grade. Since appeals involving the same legal questions are being constantly brought before the court of cassation, this tribunal is gradually building up a body of case-law despite the fact that it is not bound by its previous decisions. It should be reiterated at this point that although the court of cassation is the court of last resort in all ordinary civil and criminal cases, it has no power to declare any law unconstitutional.

Its organization
and powers.

The prestige of this court is very great. A seat on its bench is the vaulting ambition of every judge and *procureur* in the lower courts of France. The procedure used in the court of cassation is quaint, having come down without much change from the great ordinances of Louis XIV. The Napoleonic code of procedure left it

Its prestige
and procedure.

¹ The name comes from the verb *casser*, to quash, overrule, or annul.

² In the case of the civil sections, one section (*chambre de requêtes*) examines the appeal to determine whether it is worth consideration. If its decision is affirmative, the appeal then goes to the other civil section; otherwise it is thrown out. By this method frivolous appeals are discouraged.

substantially untouched. The contending parties submit briefs in writing; then the actual pleading consists of short oral arguments on the principal issues by the chief attorneys for both sides. These legal points of disagreement are then studied by a single judge who submits his findings to the whole chamber, which may accept or modify these findings as it sees fit.

Special tribunals:
(a) the commerce courts.

Mention ought to be made of three special tribunals which stand outside the hierarchy of regular courts but whose work is of considerable importance. The first of these are the commerce courts (*tribunaux de commerce*) which decide controversies arising out of commercial transactions, including bankruptcy proceedings. They are established in all French cities of any considerable size. The judges are elected by the merchants of the municipality. In Paris there are about 47,000 persons qualified to participate in the election of these commercial judges. They relieve the regular courts from the task of handling a huge grist of trade disputes. Appeals from the decisions of the commerce courts go to the court of appeals.

(b) the courts on industrial arbitration.

In the second place there are courts of industrial arbitration (*conseils de prud'hommes*). These are semi-judicial bodies made up equally of employers and employees with a justice of the peace presiding. They settle, or try to settle, labor disputes—especially those connected with wages, conditions of work, and wrongful dismissals. Thus they afford a prompt and inexpensive means by which the worker can get redress if injustice has been done. An appeal may be taken to the regular civil tribunals in any case where the amount involved is above a certain sum.

(c) courts of expropriation.

Finally, there are special courts for the fixing of compensation when private property is taken for public use under the right of eminent domain. These courts are composed of a jury alone—sixteen citizens drawn for the purpose and known as a jury of expropriation. They report their findings to the civil court which promulgates the award. In the United States, when private property is taken for public use, the constitution requires that the deprived owner shall be given "just compensation." The amount of this compensation, in the event of disagreement, is fixed by the regular courts.

The French judiciary as a career.

In all the regular courts (not including those mentioned in the three foregoing paragraphs) the judges are appointed on recommendation of the minister of justice, but the latter is not free to

recommend whom he pleases. He must follow certain rules which have been laid down by presidential decree. As regards appointments to the lower courts the minister must make his selections from among those who have passed special examinations or who have had a certain amount of experience either as prosecutors or in some other official position. For appointments to the higher courts the recommendations must be made from among the judges of the lower courts in accordance with a table of promotions.¹ It is provided, however, that the minister may depart from the *tableau d'avancement* in certain cases.² This system of appointment and promotion, which went into force in 1906, has greatly diminished the activity of the politicians in relation to the French judiciary, but it has not yet eliminated this activity altogether.

Most judicial appointments in France are made without limit of time. In all the courts, except the lowest and the highest, the judges are presumed to hold office during good behavior or until they reach the age limit.³ Any accusation of misconduct against a judge (save in the case of its own members) is heard by the court of cassation which may render a verdict of removal. But the court of cassation has itself no such legal protection; its members may be removed by the President of the Republic at any time. In practice removals do not take place without good reason.

Tenure of
the judges.

By law and by custom, therefore, security of judicial tenure is well established in France. But it is not guaranteed by the constitution as in the United States. There is nothing to prevent wholesale dismissals under the guise of a law for reorganizing the courts. Such purgings (*épurations*) of the judiciary have at times taken place, but not in recent years (the last occasion was in 1883), and public sentiment is now so adverse to the practice that nothing of the sort is likely to occur again, unless the royalists or the communists some day manage to get control of both chambers.

No constitutional
guarantee
of it.

¹ This does not apply to the *juges de paix* who are rarely promoted. Judges of the courts of appeal and of assize are promoted from the courts of the first instance; judges of the courts of cassation are selected from the courts of appeal.

² There is a separate table of promotions for each higher court. It is prepared anew every year by the minister of justice with the help of a judicial commission and is based upon merit as well as seniority. The minister must fill at least three-fourths of the annual vacancies from this list; for the remaining one-fourth he may go outside.

³ The *juges de paix* are not regarded as judges within the meaning of this provision. There are special rules, prescribed by a law of June 14, 1918, relating to their appointment and removal. Nor do the rules against irremovability apply to the administrative courts (see *below*, pp. 543-544).

A survey of
criminal
procedure
in France:

The procedure in the regular courts of France differs greatly from that followed by the courts of Great Britain and the United States. To explain all the differences would lead one into a long and technical narrative, of no interest save to legal specialists. But the more outstanding contrasts may be made clear by outlining how a criminal case runs its course in the French tribunals. This is not to imply that in France all criminal cases are tried in exactly the same way. The procedure is not absolutely fixed and may be varied a little as the occasion demands. But what follows will serve as a fairly typical illustration.

The *enquête* before
the *juge*
d'instruction.

Let us suppose that a serious crime is committed and an arrest made by the police. The prisoner is first taken before an examining officer known as a *juge d'instruction*. Despite his title, this functionary is not a judge at all but a preliminary inquisitor who makes no finding of innocence or guilt. He merely holds an inquiry during which he closely questions the accused person. This *enquête* is not a public hearing, but the accused is permitted to have his counsel present. Witnesses are summoned, and all phases of the case are gone into. Then the *juge d'instruction* puts a summary of the matter into writing, and if he finds that there is sufficient ground for holding the accused he refers the case to the nearest *chambre d'accusation* which is the indicting body in France, there being no grand jury system as in the United States.¹

Its nature.

In any event the preliminary *enquête* is thorough and searching. It leaves no portion of the accused's life-history unrevealed. Complaint is often made that there is too much of what we call the "third degree," too much grilling and browbeating of the accused in the endeavor to force a confession of guilt.² On the other hand there is an obvious safeguard against too much of this so long as the prisoner is entitled to have his counsel present at the inquiry.

The indictment.

When the case comes before the chamber of accusation the latter does not hear any additional evidence but merely examines the record. It may then order the accused to be discharged, or it may frame an indictment (*acte d'accusation*) against him. The actual work of drawing this document is done by the prosecuting officers of the court. Unlike the indictments returned by an American

¹ It will be recalled that the *chambre d'accusation* (or, to give its full title, the *chambre des mises en accusation*) is one of the sections of a court of appeal.

² A vivid portrayal is given in Eugène Brieux's drama, *La Robe Rouge*, Act I, Scene 7, cited by Professor J. W. Garner in his article on "Criminal Procedure in France," *Yale Law Journal*, Vol. XXV, p. 260.

grand jury, the *acte d'accusation* is not a carefully-worded enumeration of the charges against the accused person, but a voluminous recital which may (and often does) include a vitriolic tirade against him, his general character, his past misdeeds, and even the bad reputations of his relatives. It sounds like a prosecuting attorney's concluding address to an American jury in a criminal trial.

Yet no one should conclude from this procedure that innocent persons run a greater risk of indictment in France than in the United States. Quite the contrary. In the United States the power to indict rests ostensibly with the grand jury, a body of laymen chosen by lot, but they are quite susceptible to the influence of the district or state's attorney. Sometimes they virtually do what he tells them to do, and he, being an elective official, is not always immune from political pressure. Hence we have sometimes seen grand juries used by district attorneys as instrumentalities for the promotion of their own political ambitions. In France the power to indict rests with a chamber of at least five judges, who are appointed by the chief of state and are irremovable except for good cause. All five judges must sign the indictment. These preliminaries, moreover, are pushed through more promptly in France than in this country. The accused must be brought before a *juge d'instruction* within twenty-four hours, and the chamber of accusation ordinarily does its part within the next fortnight.

An American comparison.

After his indictment the accused is brought to trial in a court of assize. Three judges sit on the bench in this court and the jury panel consists of thirty-six citizens whose names are drawn from an urn one by one. The prosecution and the defense may challenge any juror, with or without cause, until there are no more names in the urn than there are jurors to be selected. Thereupon no further challenges are permitted. When a long trial is anticipated, it is the practice to select, in addition to the twelve regular jurors, one or two extra jurymen who sit with the others and are available for service in case a regular juror is taken ill. As a rule it does not take long to empanel a jury in France, never more than a few hours. In America, as everyone knows, it may take several days, and sometimes more than a week. The American jury panel, moreover, often contains a hundred names, and when it is exhausted a new panel may be summoned.

The trial: selection of the jury.

When the French jury has been chosen, the presiding judge explains the accusation but does not ask the prisoner to plead. Nor

The judge's interrogatory.

does the prosecution begin the trial in American fashion by giving a review of what it expects to prove. Instead, the presiding judge begins his *interrogatoire*, which is an examination and cross-examination of the accused. This may continue for several hours. Meanwhile the associate judges, the public prosecutor, and the counsel for the defense are supposed to sit in silence.

Its nature.

When the presiding judge is a skilful questioner this arrangement provides a quick and effective way of bringing out the essential facts. But many of the French judges are neither skilful nor unemotional, hence the interrogatory sometimes develops into a rather undignified disputation between the prisoner and the bench. This phase of judicial procedure has been vigorously criticised in recent years and there is a widespread demand that it be abolished. Police officers complain that when a judge grills an accused person too severely during his interrogatory the latter gets the jury's sympathy to such a degree that he is sometimes acquitted in the face of the strongest evidence.

Presentation of the evidence.

After the presiding judge has finished his attempt to get the facts from the prisoner, the witnesses are called. This is just the reversal of Anglo-American procedure. Usually the witnesses for the prosecution are called first, then those for the civil party ¹ (if there is one), and finally those for the defense. This is the order laid down in the code of criminal procedure; but it is sometimes varied and the witnesses are called in irregular order, so that the jury may not know which side they are testifying for.

Examination of witnesses.

The examination of the witnesses is conducted in a way quite different from that to which we are accustomed in the United States. Each witness, on being sworn, is instructed to tell all he knows. Most of them obey this instruction all too literally. The code expressly provides that a witness must not be interrupted, but the court of cassation has ruled that if he rambles too far from the case the presiding judge may call him to order. In a French court witnesses are *heard*, not *questioned*. So everything goes as evidence at a French assize—hearsay, rumors, opinion, suspicion, animosity,

¹ The term "civil party" requires a word of explanation. In France anyone who has been injured in person or in property as the result of a crime may enter the case as a *civil party*. For example, a truck driven by a drunken driver collides with a taxicab and kills a passenger therein. The truck driver is indicted and the state prosecutes. These are the two parties to the criminal side of the case. But the owner of the demolished taxicab may enter as a *civil party*, claiming damages. In the United States he would have to enter a separate civil suit which would be tried independently.

invective, anything that a witness chooses to pour forth. He may tell what he saw, what somebody else saw, what he heard, or what somebody else heard somebody say he saw. Accordingly there are no long wrangles between the attorneys as to whether certain evidence is admissible or not. Anything is admissible if the presiding judge cares to listen to it, for the code provides that he may admit "whatever in his opinion will conduce to the ascertainment of the truth."

Then, when the witness has had his say (without interruption) the presiding judge may question him. This he proceeds to do without first giving the lawyers a chance. When the judge has finished with the witness he must permit the public prosecutor to ask questions directly; but the counsel for the defense, and for the civil party if there is one, are never allowed to examine or to cross-examine in this way. They must ask their questions through the presiding judge, and the latter may decline to put any question that he deems irrelevant. Needless to say this arrangement greatly abbreviates the time taken in the examination of witnesses by counsel. Jurors are also allowed to ask questions, but they rarely do so. Nor is it usual for the two associate judges to question the witnesses, although they have that privilege.

The cross-examination.

When the witnesses have all testified, the public prosecutor delivers his address to the court and calls for a verdict of conviction. The counsel for the civil party and for the defense follow him in the order named. The prosecutor may then speak in rebuttal; if so, the counsel for the defense must be given the final word. The code expressly requires this, and it naturally gives the accused an advantage. As a rule the concluding addresses are not lengthy. The presiding judge does not "charge the jury" as in America; he does not sum up the case and call attention to the real points at issue. Nor does he instruct the jurors that they must bring in a simple verdict of guilty or not guilty. On the contrary he submits to the jurymen a list of questions which they are to answer. Was the accused present when the crime was committed? Has his alibi been proved? Was the assault or homicide committed in self-defense? And so on. One of the questions always asks the jurymen whether, in the event of their finding the defendant culpable, there were any extenuating circumstances. Sometimes the list of questions is long and complicated, and for this reason the answers which the jurors give are occasionally inconsistent with one another.

The addresses of counsel.

Submission of questions to the jury.

Reaching
the verdict.

The jury retires from the courtroom and frames its answers by majority vote, a secret ballot being taken on each question. When any matter requiring the advice of the presiding judge arises in an American trial it is the practice to bring the jury back into the courtroom where the judge gives his explanation in public. In France a different plan is pursued. There the presiding judge goes to the jury room, accompanied by the public prosecutor and the counsel for the accused. Not infrequently he is summoned for the purpose of telling the jurors what penalty he is likely to impose in case the answers are adverse to the defendant. This shows that French jurors have not caught the spirit of the jury system. They desire to do more than serve as an agency for the determination of the facts. The code of criminal procedure in France stipulates that a jury has nothing to do with penalties; but French jurymen often insist upon influencing penalties in a round about way. They do not like to place anyone in jeopardy without a prior assurance that the punishment will conform to their own ideas.

Functions
of the
judges.

On the basis of the jury's answers the three judges announce the verdict and impose the sentence. In case of disagreement among themselves the three judges decide by majority vote. In general they must act in accord with the jury's answers; but if the jury has voted six to six or seven to five on any question the three judges are free to frame a verdict of acquittal (but not a verdict of conviction), provided they are themselves unanimous. The code of criminal procedure also stipulates that a lenient sentence must be imposed whenever the jurymen report that they have found extenuating circumstances. French juries are notoriously partial to defendants. There is widespread complaint that they readily condone offenses of a political character, crimes committed by strikers, cases that come under the unwritten law, and indeed most of the so-termed *passionnel* offenses. This leniency is said to be more pronounced in Paris and the other large cities than in the rural districts.

Appeals.

From the verdict and sentence at the assizes an appeal may be taken on any issue of law to the court of cassation. This court, under ordinary circumstances, has no power to set aside the verdict; it can merely order a new trial and this rehearing takes place in some court of assize other than the one in which the original trial was conducted. In certain quite exceptional cases, however,

the court of cassation may set aside the verdict of the assize without ordering a new trial.¹

Thus a criminal trial in a French court is an investigation not a contest. It is not a forensic battle between two opposing platoons of learned counsel. The rule that questions must be asked through the mouth of the presiding judge has had the effect of discouraging frivolous inquiries on the part of the defendant's attorneys. The practice of giving the presiding judge full discretion as to the range of admissible evidence serves to eliminate most of the long wrangles and protests and "exceptions" which take place in the criminal courts of the United States. The requirement of a majority instead of unanimity in reaching a jury's decision on any point has the advantage of avoiding deadlocks. There can be no such thing as a "hung jury" in France. Furthermore, there is a good deal to be said for the French plan of submitting to the jury a series of definite questions as contrasted with the American practice of insisting upon a categorical verdict, for it gives the jurymen something specific to work upon. In America we avow that juries determine questions of fact alone; but what we actually require them to do is to fix guilt or innocence, which is by no means the same thing.

Merits of
French
criminal
procedure.

On the other hand there are some features of French criminal procedure which are wholly out of consonance with Anglo-Saxon legal traditions and hence would not be tolerated by public opinion in the United States or in England. A prisoner may be required to give evidence against himself. A witness is not permitted to refrain from answering any question on the ground that his answer may be self-incriminating. A prisoner cannot demand to be confronted by the witnesses against him. Written evidence may be received and accepted against an accused person without giving him an opportunity to cross-examine the authors of such evidence. The custom of admitting hearsay is one that ought not to be tolerated in any well-ordered judicial system, nor should the practice of letting the jury ask the judge about the probable penalty.

Some
obvious
defects.

The procedure in civil cases is necessarily different from all this because juries are not used to such controversies, nor is there a public prosecutor. Much of the evidence is submitted in writing. The *avoués* or lawyers on each side present their arguments to the judges who sit en banc, and the latter give judgment by majority

Civil pro-
cedure.

¹ For example, it did this in one case where a defendant had been convicted of murder and it subsequently appeared that the supposed victim was still alive.

vote. Civil trials move more rapidly in France than in the United States. Less heed is paid to technicalities. The right of appeal is more restricted. Yet the French judicial system has not found much favor among English or American jurists, which is partly because so few of them understand it. One sometimes hears an American lawyer remark that "in France a man is deemed guilty until he proves himself innocent"—and the Dreyfus case is cited as affording an illustration.¹ There is no basis for any such assertion. The presumption of innocence is the same in both countries. Anyhow Dreyfus was tried by court-martial, not by one of the regular criminal courts, hence his case has no relevance in any discussion of French judicial procedure.

A. W. Spencer's *Modern French Legal Philosophy* (Boston, 1912) gives the student a good idea of the French legal system in general. See also Jean Brissaud, *History of French Public Law* (London, 1915). The best short discussions of judicial organization and procedure (in English) are the articles by Professor James W. Garner on "The French Judiciary" in the *Yale Law Journal* (March, 1917), and on "Criminal Procedure in France," in *Ibid.* (February, 1916). To these illuminating articles the foregoing chapter is considerably indebted. The *American Law Review* (Vol. XLVI, *passim*) contains an interesting comparison of French and American judicial methods. Developments of the legal system in France may be followed in the *Revue générale du droit*, published under the editorship of Professor M. J. Bonnecase.

¹ See pp. 496-497.

CHAPTER XXVIII

THE SYSTEM OF ADMINISTRATIVE JURISPRUDENCE

The French system of administrative law, and the very principles on which it rests, are quite unknown to English and American judges and lawyers.—*Albert Venn Dicey.*

The preceding chapter has been devoted to the regular French courts and their procedure. There is another branch of French law, however, and another set of tribunals, both of which deserve attention, for they play a considerable part in the jurisprudence of the Republic. We hear very little of administrative law and administrative courts in Great Britain and America, but this is not because both countries are lacking in anything of the sort. Both England and the United States have systems of administrative law, and they have administrative commissions for enforcing it. But administrative law is not regarded in these two countries as a separate body of law, distinct from the ordinary law of the land, based upon different principles and quite differently applied.

A special branch of jurisprudence.

What is administrative law? Before trying to answer this question it may be well to recall the ancient legal maxim that "the king can do no wrong." This principle, or something akin to it, is recognized in all countries. The sovereign cannot wrong his subjects, and hence is not liable to be sued by them. The doctrine was succinctly stated by Chief Justice Roger B. Taney of the United States Supreme Court as follows:

The basis of administrative law.

"It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals." ¹

This juristic rule rests upon considerations of public policy; it would be inconvenient and dangerous to follow a contrary principle. The public service would be hindered, and the public safety menaced if the supreme authority could be enjoined from

The justification for it.

¹ *Beers v. Arkansas*, 20 Howard, 527 (1857).

action by any citizen at any time. Neither the United States, therefore, nor any state of the Union, can be sued by an individual save with its own consent. But with this consent it may be sued—in accordance with the legal procedure laid down in such cases.¹

The theory is not rigidly applied.

Now while this sovereign immunity is all well enough as a legal fiction, the fact remains that a nation or a state must exercise its sovereign powers through human agencies—through public officials who are elected or appointed to do the work of governing. And these officials, being human, will at times make mistakes, display negligence, exceed their authority, act arbitrarily, and do injury to citizens or their property. A strict adherence to the principle that "the king can do no wrong" would lead to frequent and grave injustices. It would mean that the citizen must suffer wrong without redress. For this reason all sovereign states do, in fact, assume a varying amount of legal liability and permit themselves or their public officials to be sued under certain prescribed conditions.

How can the citizen be best protected against arbitrary acts of government?

The question is: How can this legal liability be safely assumed by the state? Should citizens be permitted to sue the state (or its officials acting under its authority) in the regular courts, or should special courts be provided for this purpose? Should the suit be brought under the general laws of the land, or in accordance with special rules established for controversies of this character?

The Anglo-Saxon answer to that question.

England and America have answered these questions in one way; France, Italy, and other continental countries have answered them differently. Their action, in both cases, goes back to the fundamentals of their respective legal systems. The common law, upon which the jurisprudence of England and America rests, is peculiarly equalitarian in its ideals. It is, and always has been, intolerant of special privilege—especially on the part of those who are the agents of the government. It places upon the public official, be he governor, mayor, policeman, or inspector, the burden of proof that all his actions are fully warranted by law. No English or American official enjoys immunity from the jurisdiction of the regular courts by mere reason of the fact that he occupies a public office or wears a uniform.

¹ Most suits against the United States, for example, must be brought before a special court known as the court of claims.

But the Roman law, upon which continental European jurisprudence is largely based, came at the matter from a different angle. It regarded the state as an end in itself, and the individual as only a means to the perfection of the great body politic. It was ready to sacrifice the interest of the individual if the well-being of the state so demanded. *Salus populi est suprema lex*. From this it naturally followed that those who served the state in an official capacity were entitled to special consideration in the eyes of the law. At any rate those countries which have based their jurisprudence on the law of Rome do not display much patience with the doctrine that any citizen has the privilege of delaying or upsetting the work of public administration in order to get his own grievances redressed.¹

The answer
given by
Roman law.

In the common-law countries the citizen has precisely that privilege. In England or in America, if an individual feels aggrieved at the action of a public officer he betakes himself to the ordinary courts for a warrant of arrest, or writ of mandamus, or an injunction, or whatever the appropriate writ may be. He may ask for an injunction to prevent the paving of a street, the awarding of a contract, or the levying of a tax. He may get a writ of mandate ordering the election board to put his name on the voters' list or directing the building commissioner to issue him a permit. There are times when a group of American citizens may secure from the courts a decree which ties up some branch of the public business for weeks at a time.

Official liability in
England
and in
America.

All this is in conformity with the Anglo-Saxon legal principle that all officials save the very highest (and with certain exceptions which will be presently noted) are subject to the ordinary laws of the land and are amenable to the jurisdiction of the regular courts.

Equality
before the
law.

¹ Joseph Barthélemy, in his *Gouvernement de la France* (Paris, 1919) argues that the system of administrative law was largely a spontaneous result of the French Revolution. The revolutionary authorities, he says, had to make attacks upon property and persons; the judges of the regular courts tried to protect the citizen; whereupon the government fulminated its prohibitions against them. They were forbidden to interfere with administrative acts. "Thus originated," he says, "the unfortunate principle of separating the administrative from the judicial authorities."

But the separation antedates the great upheaval of 1789. It was a logical outcome of two features which characterized the old régime in France, namely, the weakness of the courts and the overpowering strength of a centralized administration. Writing of the French judicial situation before 1789 Alexis de Tocqueville says that "in no other country were extraordinary courts more extensively employed." If France had possessed a system of common law, as in England, with regular courts strongly entrenched, it is not probable that the system of administrative law and courts would ever have come into being.

The highest officials, in turn, are subject to impeachment. If the ordinary officers of government do wrong, whether in their official or unofficial capacities, they may be haled before the regular courts and enjoined or penalized like anybody else.

Hence no dual system of courts.

Both in England and in the United States, however, a public official is permitted to show that the wrong was not wilful, but occurred in the reasonable exercise of discretion given by law, in which case he is not held liable. And it should also be mentioned that there are, in both countries, certain special courts and commissions (like the court of claims at Washington) which exist for the purpose of adjudicating claims brought by private individuals against the government. But neither in England nor in the United States do the rules relating to the suability of the state or the public official form a separate branch of jurisprudence; they are part of the ordinary law. Nor do the special courts and commissions make up a system of administrative tribunals distinct from the regular judiciary. The court of claims at Washington and the court of customs appeal are integral parts of the American federal judiciary.¹ They have no special status by reason of the fact that virtually all cases coming before them are concerned with some act of a public official.

The common-law attitude toward public officials.

The common law makes no distinction between the acts of an official and those of a private citizen. In either case they must be acts which are legally justifiable or the doer may be prosecuted. Englishmen and Americans therefore make no clear separation between public law and private law,—the one applying to officials and the other to ordinary citizens. On the contrary they set great store on the maxim that all men are equal before the law. This maxim, to be sure, is not rigidly applied in every instance, and it would be erroneous to assert that in America the rights, duties, and liabilities of a public officer are determined by exactly the same rules and presumptions of law as are those of an ordinary layman. Nevertheless the principle of equality is fairly well maintained.

But in France, and in other countries of continental Europe, the public officials are given a special status at law. For acts performed under color of their official duties they are not amenable to the

¹ At the outset the court of claims was not a regular court and its decisions had no mandatory effect. They were embodied in bills which went before Congress for approval. But later it became a regular court, and its decisions are now final unless an appeal is taken to the Supreme Court.

ordinary laws of the land nor may they be brought before the regular courts. If an individual believes himself to have been wronged by any official's bad judgment or arbitrary action he is entitled to seek redress, but he must seek it from special tribunals which are maintained for this purpose and which apply a special set of administrative rules.

The attitude of continental European jurisprudence.

It should be made clear, however, that this immunity of public officials from the jurisdiction of the regular courts does not extend to anything done by them in a personal or non-official capacity. It does not even extend to acts performed in an official capacity if the injury results from the personal fault or personal negligence of the public officer. If, for example, a policeman makes an arrest in the course of his duty and in accordance with his instructions he cannot be sued in the ordinary courts no matter how wrongful the arrest may be; but if he makes an arrest outside the course of his duty and in disregard of his instructions he may be dealt with like any private individual who lays himself open to a civil suit for assault.

A word of caution on this point.

This division of jurisdiction between the regular and the administrative courts in France has existed for more than a century and is regarded as essential to the proper functioning of the government. At first glance the division seems to give the public officials a privileged position, and hence to be undemocratic, for the American conception of democracy is hostile to the idea of giving anybody a judicial status which his fellow citizens do not enjoy. But a moment's reflection will bring to mind the fact that even in democratic America we accord to hundreds of public officials special privileges in the eyes of the law.

Is the special privilege of the public official undemocratic?

To take a single illustration: the Constitution of the United States provides that members of Congress shall "in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session . . . and for any speech or debate in either House they shall not be questioned in any other place." The state constitutions give a similar immunity to members of the state legislatures. In other words they create a highly privileged class. If a congressman or a state legislator utters a slander on the floor of his legislative chamber he cannot be brought before the ordinary courts and penalized; he can only be disciplined, if at all, by the House itself. But if you or I, plain citizens, were to utter the selfsame words we should promptly be dealt with as common malefactors.

An illustration.

"Ah, yes!" someone may reply, "these legislators are given a privileged status, but it is entirely justified. The work of law-making could not be properly carried on if the legislators were subject to arrest on charges trumped up to embarrass them. There would be no freedom of debate if our lawmakers were responsible to any outside authority for the accuracy of their statements on the floor." All of which is quite true. The immunity of legislators is essential to their independence and to the proper functioning of the government.

And a query suggested by it.

But why should not the administrative officers of the government be given a like privilege? Is not their independence also a desideratum? We speak of legislation and administration as coördinate functions in government; why then should the one be accorded a protection which is not given to the other? The French system of administrative law and administrative tribunals is based upon the principle that all public officials, and not legislators alone, ought to be given a reasonable degree of immunity from the control of the ordinary laws.

Administrative law is case-law.

Administrative law in France may therefore be defined as that part of the law which fixes the competence of the public authorities and provides the individual citizen with remedies for any violation of his rights by them. It is not embodied in a code, like the civil law. It is case-law, made up almost entirely of precedents. Some of the rules have been established by the issue of decrees, but in large part they have been accumulated by the decisions of the administrative courts, especially by the decisions of the council of state and the court of conflicts. In this respect it somewhat resembles the common law which has been slowly built up in the regular courts by one decision after another.

This has given it merit.

Foreign jurists have often expressed their admiration of French administrative law because it has been so carefully constructed, step by step, in accordance with the needs of the times. A system of law that has grown through the lapse of time is better than one which has been created *de novo* by the action of any parliament or legislature. Administrative law in France is not fixed or stereotyped. It is the one great branch of the law that has not been codified. If you want to know the rules of administrative law on any point you must study the decisions of the administrative courts, just as the American lawyer, when he desires to master the common law in any of its branches, must wade through the judicial decisions.

The French system of administrative law, built up in this way, covers a surprisingly wide range. It deals not only with the liability of the state and its subordinate divisions for injuries done to private individuals or their property, but with the rules relating to the validity of administrative decrees, the methods of granting redress when public officials exceed their legal authority (*recours pour excès du pouvoir*), the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between official and personal acts on the part of public officers, and many kindred matters.

Its wide range.

The whole system is well-knit together and liberal in its attitude toward the individual.] Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary they regard it as a palladium of their liberties, a protection against arbitrary governmental action. They are right in so regarding it, for it gives them a protection which otherwise they would not have. It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."¹

The attitude of the French people towards it.

The principal administrative courts in France are the interdepartmental councils of the prefecture and the council of state. The former are a new creation and replace the old prefectural councils, of which there was one in each department. Under this new arrangement there are twenty-two interdepartmental councils of the prefecture, each serving from two to seven departments. In addition, the Department of the Seine, because of its large population, has a council of its own. [Each interdepartmental council consists of a president and four councillors, all of whom are appointed by the national government on recommendation of the minister of the interior.]

The administrative courts:

1. The interdepartmental councils of the prefecture.

In general, the new interdepartmental councils have the same jurisdiction as the old councils of the prefecture. They hear complaints made by individuals against the actions of subordinate officials. They deal with controversies concerning tax assessments and most of the matters which come before them are of this

Their jurisdiction and procedure.

¹ James W. Garner, "French Administrative Law," in the *Yale Law Journal*, Vol. XXXIII, (April, 1924), p. 599.

nature. Other questions over which they have jurisdiction are those relating to public works (especially highways) and the conduct of local elections. The procedure which they follow is simple and entails no expense to the complainants. Each individual petition is referred by the council to an investigator. Then, when the latter makes his report, an informal hearing is held and a decision promptly made.

2. The special administrative courts.

Parallel with the interdepartmental councils of the prefecture are various special administrative courts, notably the educational councils and the councils of revision. The former are composed of educators and deal largely with complaints arising in the system of public instruction. The latter have to do with disputes between citizens and officials arising out of the enforcement of the laws relating to compulsory military service. Their importance has lessened since the war.

The council of state.

Appeals may be carried, in virtually all cases, from any of these lower administrative courts to the council of state, or, more accurately to that branch of the council of state which acts as a superior administrative court. Appeals are frequent, and they often result in a reversal of the lower decisions. The council of state is a large body, made up of two elements, political and non-political. Controversies concerning matters of administrative law, however, are heard and determined by a section of the council which consists of thirty-five non-political members, or *conseillers en service ordinaire*, as they are called. These councillors are men of high legal attainment and do their work in masterful fashion. On the roll of *conseillers* one may find the names of many eminent jurists, men worthy to sit on any tribunal however high.

Its high place and prestige.

The council of state, says an American writer, "occupies a place in the public esteem and confidence of the French which is even higher than that which the Supreme Court enjoys among the American people."¹ This is because its decisions have consistently shown an aim to guard the rights and interests of the whole citizenship against encroachment by the public authorities. It has deemed no cause too trivial for its attention, when some substantial right of the individual citizen appears to have been infringed.² Thus

¹ James W. Garner, "French Administrative Law," in *Yale Law Journal*, Vol. XXXIII (April, 1924), p. 599.

² Barthélemy cites as an illustration the case of a general council (see *below*, p. 561) in one of the departments which offered a small bounty for every poisonous snake killed during the year. It appropriated a sum to pay these bounties, but the re-

it has become a great buffer between the public and the bureaucrat.

The council of state, every week in the year, grants redress to French citizens which no American could obtain from the regular courts of his own country. Time and again it has held that the individual who suffers loss through the negligence of the police is entitled to compensation from the public treasury. It has ruled that persons injured through the collapse of a building owned by the government (and used for purely public purposes) must be compensated. In a word it holds that the state must pay for whatever damage its officers cause, through their official malfeasance or negligence, just as any private employer must make good the torts of his agents.

Value of its work.

Those who are familiar with the principles of public liability as applied in the regular courts of the United States need not be told that no such generosity of redress exists in this country. An American city assumes no liability for injuries caused to the property of its citizens by the negligence of policemen, firemen, or health officers. You can sue the policeman in the regular courts (for all the good that it will usually do you), but the courts will award you no damages against the city which employs him. In the United States we take refuge behind the legal sophism that the sovereign state can do no wrong and hence cannot be held liable for the way in which its governmental functions are exercised. The French method of dealing with such matters may seem to offend the shibboleth of legal equality, but it unquestionably renders more justice to the common man. For it is better to sue in a special court, under special rules of law, and get real redress than to have the empty privilege of taking your grievance before the regular courts where you are likely to get nothing.

French and American methods of redress to the citizen compared.

The council of state deals with several thousand cases every year. They range in importance from controversies over the boundaries of a village cemetery to the annulment of a presidential decree.

Simplicity of the council's procedure.

[There is no way in which acts of the public authorities can escape the surveillance of this administrative court if any citizen chooses to call the act in question.] He may do this, moreover, with very little trouble and expense to himself. Formalities and fees are at a

sultant snake-killing far exceeded the expectations, and the appropriation proved inadequate. Whereupon the prefect naturally declined to pay any more rewards after the money was exhausted. So the council of state was petitioned for redress and it decreed that the authorities must live up to their original offer, no matter what it might cost them to do so.

minimum. All the aggrieved individual need do is to present a petition on a stamped form, the cost of which is small, and even this is reimbursed if he wins his case. So anybody who has a grievance relating to officialdom can have it gone into by one of the investigators whom the council employs for the purpose. A better safety-valve for the malcontents would be hard to devise.

An offset-
ting defect
of this sim-
plicity.

This facility with which individual grievances can be brought before the council of state is not without its disadvantages. It gives the council an enormous number of grievances to investigate, and the complaint is made that the calendar has now become badly congested. A special effort has been made to expedite business, but the cases keep piling up and it seems to be only a matter of time until the accumulation will compel some change in the present arrangements, either by enlarging the council or by placing some limitation upon the ease with which grievances may be laid before it.

The annul-
ment of de-
crees.

It has been mentioned that no court in France has power to declare unconstitutional a law passed by the two chambers. But this immunity from judicial veto does not apply to ordinances and decrees—not even where they are issued as a means of applying the provisions of a law. Such decrees can be annulled, no matter what their nature, or how lofty the personage issuing them. And it has been pointed out that a large portion of what we call “lawmaking authority” is exercised in France by the issue of these ordinances and administrative decrees. The council of state may also annul the action of any subordinate lawmaking body, such as a general council or a municipal council, if it finds such action to be outside the scope of their authority. National laws are alone exempt.

Collateral
attacks
upon ad-
ministrative
decrees.

In addition to this form of annulment the ordinary courts may decline to enforce any ordinance or decree on the ground that it is out of conformity with the general laws, or defective in form, or in violation of the fundamental rights of French citizens. The regular courts do not formally declare such decrees to be invalid but merely decline to enforce them. If, for example, an individual is brought before a court for violating a municipal ordinance and raises an exception to its legality, the judges may, if they see fit, sustain the exception and dismiss the charge. But this is not commonly done. The regular courts are in the habit of upholding a decree until the council of state rules adversely upon it.

Effects of an
annulment.

When the council of state invalidates a decree or ordinance it does not ordinarily award damages to anyone who has suffered injury by

reason of the attempted *excès du pouvoir*, but its action permits the injured person to bring an action for damages. This he often does and obtains an award. In the United States no redress can be had from the courts in such cases. If an American city council, for example, enacts an ordinance which is beyond the scope of its power, or is otherwise illegal, the courts will quash the ordinance; but they will not usually hold the city liable for any injury that may have resulted in the meantime. So, here again, the French citizen is better off by reason of his system of administrative jurisdiction.

It has been said that the council of state can annul any decree by whomsoever issued. But there are certain actions of the President, taken on the advice of his ministers, which are not held to be decrees in this sense—*actes de gouvernement*, they are called, to distinguish them from ordinary presidential decrees or *règlements d'administration*. The former are deemed to be political in character, the latter administrative; but the exact line of demarcation between the two is not altogether clear, even to the experts. A presidential decree setting forth the methods of taking a census would obviously be an administrative act and hence subject to invalidation; but a decree dissolving the Chamber of Deputies would just as clearly be a political act and hence not open to review. The tendency of the council of state has been to broaden the category of administrative decrees until, at present, almost all the actions of the President are held to be performed in his administrative capacity. *Actes de gouvernement* are now uncommon, save during national emergencies.

A limitation on the council's power.

The administrative courts may invalidate decrees and ordinances on a variety of grounds. The most common among these is the annulment for *excès de pouvoir*, or, as we commonly express it, for being *ultra vires* (i.e., beyond the legal authority) of the official or council issuing it. Decrees and ordinances may also be voided for what the French administrative courts call a misuse of power (*détournement de pouvoir*). In such cases the authority of the official to issue the decree is not questioned, but the manner of his exercising the authority is attacked.¹ Annulment may also take place

The various grounds for annulment.

¹ For example, where the President of the Republic has dissolved a municipal council, on the advice of the minister of the interior, ostensibly because it was irregularly elected but in reality because it has quarreled with the prefect. The municipal code clearly empowers the president to issue a decree of dissolution, so that there is no *excès de pouvoir*; but there is a misuse of power if the dissolution appears to have been ordered on political or personal grounds.

for irregularity in the form of the decree and on various other grounds. Any citizen who has an interest in the voiding of an administrative act, even a very remote and general interest, may bring the matter before the council of state. It is not necessary for him to show, as is frequently the case in English and American courts, that he has a direct and substantial interest at stake.

Why France
needs her
system of
administra-
tive law and
courts.

France is a republic with a highly centralized administration. Everything, as will be shown in the next chapter, heads up into the form of a pyramid. If her public officials were as free from judicial control as they are in England and America there would undoubtedly be a great deal of arbitrary action. The system of administrative law and administrative courts is a counterpoise to centralization. Something of the sort is bound to develop in any country if the government extends the scope of its functions too widely and accumulates too many responsibilities. Wider functions necessitate the employment of more officials, and where the government is highly centralized the subordinate officials in this vast army of civil functionaries must inevitably keep getting farther and farther away from the ultimate seat of power.

Does Amer-
ica need
something
of the sort
also?

In the United States we have had a striking illustration of this during recent years, since the national government assumed the function of enforcing prohibition. Thousands of agents have been appointed to do this work; they have been given large discretion and authority; many of them function at long distances from the national capital; and in numberless cases they have not scrupled to set at naught the rights of the citizen as guaranteed to him by the constitution. Many of them seem to think that it is entirely proper to enforce the Eighteenth Amendment by violating the Fifth.

The regular courts of the United States have endeavored to protect the citizen's constitutional immunity from unauthorized searches, seizures, arrests, confiscations, and shootings; but not always with success. They have shown themselves able to afford no such measure of protection as the council of state provides in France. By their very impotence they have demonstrated, indeed, that if the process of federal centralization continues to make headway in the United States we shall be forced to provide some new agencies of protection against the horde of inspectorial officers who will ultimately roam the land. The best way to forestall the need of something like the French system is to keep administration decentralized.

With two sets of courts operating in France, there must be at times a conflict of jurisdiction. In America there is one Supreme Court which has the last word in controversies both ordinary and administrative. In France there are two—the court of cassation which is the tribunal of last resort in all ordinary cases (both civil and criminal), and the council of state which is supreme in all administrative controversies.¹ Neither of these two courts is superior to the other; each is supreme within its own sphere.

Conflicts of jurisdiction in France.

What happens, then, when these two supreme tribunals disagree? To settle such disagreements there is a court of conflicts composed of nine members, namely, the minister of justice ex officio, three judges delegated by the court of cassation, three by the council of state, and two other persons chosen by the foregoing seven. In addition there are two substitute members elected by the whole court. All, with the exception of the minister of justice, are named for a three-year term, but the membership is very rarely changed.² If the ordinary and administrative courts cannot agree as to which shall have jurisdiction in any case the matter goes to this arbitral court for jurisdiction. But they do not disagree very often, as is proved by the fact that the court of conflicts does not have more than a half-dozen cases to handle each year.

The Court of Conflicts.

Standard works on this subject are Honoré Berthélemy, *Traité élémentaire de droit administratif* (8th edition, Paris, 1920) and the same author's supplementary volume on *Les réformes de 1926* (Paris, 1927); Maurice Hauriou, *Précis de droit administratif* (10th edition, Paris, 1921); Gaston Jèze, *Principes généraux du droit administratif* (3 vols., Paris, 1925-1930); and Henri Chardon, *L'administration de la France* (Paris, 1908). The best-known brief manual is the *Petit précis Dalloz de droit administratif* (Paris, 1926). A recent volume of considerable interest is Raphael Alibert, *Le contrôle juridictionnel de l'administration au moyen du recours pour excès de pouvoir* (Paris, 1926). See also the volume by Paul Duez on *La responsabilité de la puissance publique* (Paris, 1927). The organization and powers of the council of state are explained in R. Brugère's *Conseil d'État* (Paris, 1910). Mention should be made of the classic chapter on administrative law

¹ The Senate, as has already been mentioned, is a high court of justice with final jurisdiction in impeachments.

² The minister of justice, while entitled to preside, does not usually do so; the remaining eight members choose one of their own number to preside. In the case of a tie-vote, however, the minister of justice is called in to make the decision. This has happened only four times since the establishment of the Third Republic.

in A. V. Dicey's *Law of the Constitution*, and of Léon Duguit's *Law in the Modern State* (New York, 1919). The latest and best brief survey of the subject is Professor Garner's discussion above cited (p. 544), but attention should also be called to Léon Duguit's article on "The French Administrative Courts" in the *Political Science Quarterly*, Vol. XXIX, pp. 385-407.

CHAPTER XXIX

LOCAL GOVERNMENT

Local institutions constitute the strength of free nations. A nation may establish a system of free government, but without municipal institutions it cannot have the spirit of liberty.—*Alexis de Tocqueville*.

It is one of the laws of political dynamics that governments develop greater stability in their lower than in their upper compartments. Their specific gravity varies directly with depth. Hence, when revolutions occur, they usually begin at the top and transform the national government. They may also modify government in the middle, that is, in the states or provinces, districts and cities. But rarely do they have much effect upon government at the bottom—in rural hamlets, villages, and towns.

The tenacity of local institutions.

Those who desire illustrations of this law in history will find plenty of them. The English civil war, for example, although it momentarily changed England from a monarchy to a republic, made no changes in the government of the English boroughs or parishes. The American Revolution did not change the government of the New England town or the Virginia county. The collapse of the German empire in 1918 did not bring about a general refashioning of government in the small German cities or in the rural *Kreise*. It takes a tremendous overturn, like the French Revolution of 1789, or the Russian Revolution of 1917, to carry the process of reorganization down into the areas of local administration. Local institutions have a superior tenacity because they are usually the product of a long evolution—because they have been moulded to the needs of the people and have become an integral part of the common life.

Some illustrations of this.

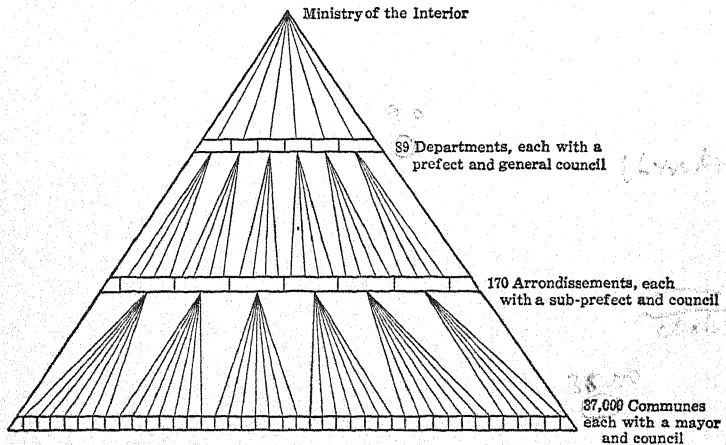
[In France the structure of the national government has been changed several times during the past hundred and fifty years.] There have been citizen kings and cotton-wool emperors, catapulted on and off their thrones by coup d'états and little revolutions, some of which transformed the spirit as well as the forms of government in the nation. [But in no case did these upsets alter the system of local government.] The government of the French de-

Stability of local institutions in France.

partment, arrondissement, and commune remains to-day, in all essentials, just as the First Emperor left it. There have been many alterations in its actual workings, of course, and as a system of local administration it is more democratic than it was in 1815, or even in 1870. But in broad and all-pervading characteristics there has been no change at all. Surely a scheme of local government which has withstood so many shocks must have a great deal of merit and vitality.

General
merits of
the French
system.

Unquestionably it has both merit and vitality. Among schemes of centralized local government the French have built better than they knew. Their system is peculiarly suited to the needs of a country in which the national government finds it necessary to retain close control over the local authorities. Centralization is the essence of this system, centralization raised to the *n*th power. All authority converges inward and upward. It is a system that can be charted in the form of a perfect pyramid.



No local
home rule in
France.

This perfect convergence of supervision means that in France there is no recognition of the principle that every city and county has a self-evident right to conduct its own affairs in its own way, free from rigid supervision by the central authorities. Municipal home rule has no place in French political philosophy. France is a centralized republic as respects all branches of its government. There is no division of powers between the nation and its component parts. There are no concurrent spheres of governmental authority. The French republic is not a federation of eighty-nine

departments; it is a unitary state which has been mapped off into eighty-nine departments for the more convenient performance of governmental functions. The departments, in their turn, have been subdivided into arrondissements, but the divisions and the subdivisions are alike mere creatures of the nation; they have no inherent powers. The minister of the interior at Paris presses a button—the prefects, subprefects, and mayors do the rest. All the wires run to Paris.

England, during the nineteenth century, exercised a great influence upon the development of *national* institutions throughout the world. Every national government from Japan to Belgium paid homage to the English example. But France, to an almost equal degree, has demonstrated her leadership in the field of *local government* almost everywhere. Her scheme of prefects and subprefects has spread to the farthest corners of the earth. One finds it, very little changed, in Italy, Spain, Portugal, Belgium, Poland, Holland, Greece, and in the Balkan States. With various adaptations it is functioning in the Far East, in the Near East, and in the countries of Latin America.

Influence of the French local government system in other countries.

Outside the English-speaking countries, therefore, the influence of France upon systems of local administration has been far reaching and profound.¹ Even in English-speaking countries the drift is steadily toward a greater recognition of those principles on which the French system of local government rests—uniformity, professionalism, paternalism, centralization. Both England and the United States have travelled far in all four directions during the past fifty years, and they are likely to keep on doing so. It is appropriate, therefore, that students of comparative government should be told something about the circumstances under which this scheme of local organization was devised, and should appreciate the qualities which have given it a world-wide vogue.

Even in England and in America.

Until after the Paris mobs stormed the Bastille on July 14, 1789, there was no system of local government in France, although the country was divided into provinces which had at one time enjoyed a considerable measure of political independence. With the growth of the royal power the political importance of these provinces had dwindled to almost nothing. The chief administrative district in

Evolution of the French system:

1. Before the Great Revolution.

¹ The two greatest contributions of France to the science of government are her *Code Civil* and her scheme of centralized local government. Both, it should be noted, were the work of the first Napoleon.

France was the *généralité*, over which ruled an intendant appointed by the king and responsible to him alone. The monarch spoke, and the intendant translated his words into action. Each intendant went about his district ordering, supervising, and controlling all matters of administration, justice, police, and finance. But there was no uniformity in the work of these officials, hence the character of the administration varied from one domain to another. They were all bureaucrats, however, and loyal to the interests of the king.

The hopeless diversity.

Within the *généralités* there were smaller administrative areas known as communes, more than 40,000 of them, ranging from little hamlets to large cities and towns. During the middle ages these communes had secured and maintained their right to self-determination, but during the sixteenth and seventeenth centuries their municipal freedom was gradually curtailed until it vanished altogether. The monarchy, as it gained in strength, deprived the communes of the right to elect their own local officers and installed royal officials in their stead. This was done by different kings, however, and under a variety of circumstances, so that there was the greatest possible diversity in the methods of communal government. No two communes, indeed, were governed exactly alike; in some of them the local offices were sold by the crown to the highest bidder, in some they were made hereditary, in some the king appointed the incumbents for short terms. In only one respect was local government uniform before the Revolution, namely, in the complete absence of popular control over any branch of it.

2. The decree of 1789.

Now the Revolution changed all this in short order. First the Revolutionary assembly issued a decree which abolished the *généralités* and divided France into eighty-three departments.¹ It further provided for the division of each department into *arrondissements*, and for the division of these, again, into cantons. Within each canton the commune was to be the smallest area of local government.

Its drastic reorganization.

Here was a scheme of geographical divisions made with a pencil and ruler, a whole nation plotted out just as a real estate promoter would do it, disregarding all considerations of history and sentiment. Save in the case of the communes all the new divisions were arbitrary creations, without local traditions, and often without in-

¹ This number was increased to 89 in 1815, then reduced to 86 in 1871, and again increased to 89 in 1918.

herent unity. In all of them, the commune included, the whole government was placed by the decree of 1789 upon an elective basis. Every official—in department, arrondissement, canton, and commune alike—was to be chosen by manhood suffrage. And the central authorities were to keep their hands off. The decree made no provision for the exercise of central control from Paris. The Revolutionary assembly imagined that local democracy could be inaugurated and made to function by the issue of a general order.

Now history has proved on many occasions that you can no more give self-government to a nation than you can “give” character to an individual. Both have got to be earned, acquired, developed, and guarded with eternal vigilance. The decree of 1789 affords a good illustration of a triumphant demos running amuck. The assembly went too far and too fast. The French people were not prepared for so great and so sudden a change. Hence, as it turned out, they were unable to use their new freedom in a sober and judicious way. Abuses developed on every hand; onerous taxes were imposed by the newly-elected governments; the public money was spent wastefully; the communes ran into debt; the local policy could not maintain order or enforce the laws, and the guillotines worked overtime. These abuses were so widespread, and menaced the public security in such a way that the national authorities decided to stiffen their control once more.

This they did in 1795 when the Revolution entered its second and more orderly stage. The principle of popular election was retained, but the local officers were brought under the supervision of a directory at Paris. A few years later, when Napoleon Bonaparte came into power, he carried the process of centralization a step farther by providing that all local officers should be appointed, not elected. Napoleon's action (1800) took out of the system most of the democracy and self-determination that the Revolution had put into it. So long as he remained in power there was no more local home rule in France than there had been under the Bourbons prior to 1789. Thus did revolution produce reaction, as it always does.

From 1800 to the present time the French system of local government has been made somewhat more democratic by republics and somewhat less democratic by kings. But the centralization which Napoleon established has never been greatly relaxed—not even after sixty years of government by the Third Republic. A descrip-

Why it failed.

3. The reaction of 1795 and the Napoleonic alterations.

4. Since 1800.

tion of French local government, written in 1875, would pass muster as tolerably accurate to-day. France has tried no radical experiments in this field during the intervening half century.

Areas of
local gov-
ernment:

The depart-
ments.

(There are eighty-nine departments in France.) These areas retain the boundaries given to them in 1789, which means that they are irregular in shape, size, and population.) A map of the French departments looks like a jig-saw puzzle. (Most of them are named after some river, mountain, or other geographical feature—thus the Department of the Seine, of the Rhône, of the Loire, of the Gironde, of the Alpes-Maritimes, and so forth. The Department of the Seine (which includes Paris) is the smallest in area but the largest in population. The French departments bear no resemblance to the states of the American Union. (Geographically, and in political status, they more nearly resemble the administrative counties of England.) Being arbitrary divisions they had at the outset very little self-consciousness, but during the past hundred and thirty-five years they have managed to develop a considerable amount of it. The department has now become a “historic” unit in France, with some homogeneity of interest. Modern methods of communication have naturally made it, in effect, a much smaller division than it was in Napoleon’s time.

The execu-
tive head of
the depart-
ment.

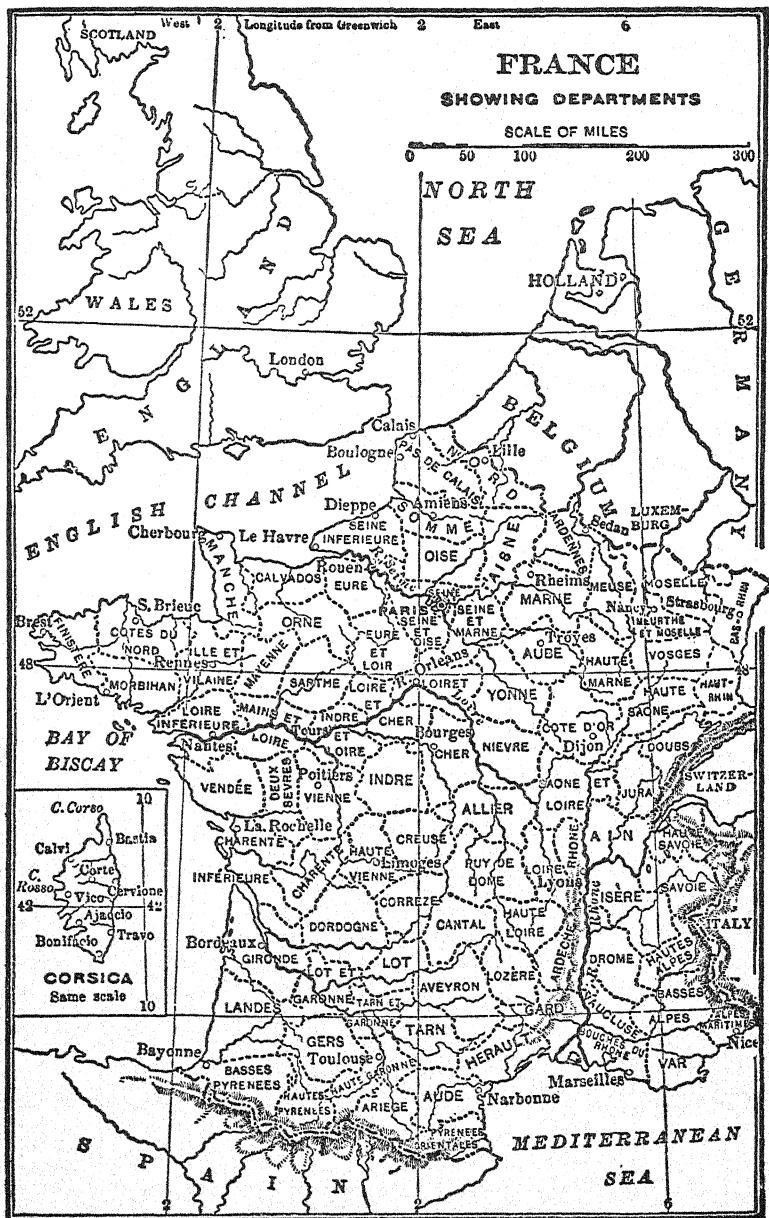
The prefect.

(The executive head of the department is an official known as the prefect.¹ He is appointed by the President of the Republic on the recommendation of the minister of the interior, and may be transferred or removed by these higher authorities at any time. As a rule the post is filled by the promotion of someone from the lower ranks of the administrative service.) Prefects are frequently appointed to the less important departments from among the senior subprefects of arrondissements; then they are moved by promotion from one department to another. But the minister may make his selections from any quarter that suits him. There are no limits on his range of choice. (Technical competence is not the prime quality desired, but obedience, tact, and ability to carry out the policy of the government.)

Removals
and trans-
fers.

A prefect may be removed by the President but absolute dismissals are rare. When the government desires to be rid of an inconvenient prefect it usually transfers him to some other post. Or it puts him on the “unattached” list, where he draws a salary but

¹ This title, like that of consul, was borrowed from ancient Rome, in which there was a prefectus urbi who served as the emperor’s right-hand man.



has no prefectural duties. The prefect, in short, is the political head of certain technical services and his usefulness is a matter for determination by the ministry which he serves. When a new ministry comes into power there are sometimes a good many transfers.

Every department has its capital or chief town, with an imposing structure known as the prefecture.¹ Above its main doorway is emblazoned the ubiquitous *Liberté, Egalité, Fraternité*; and from its flagstaff floats the tricolor. In this building the prefect has his residence and his offices. Here, also, are the offices of the prefectural staff, which consists of the prefect's confidential assistant (*chef du cabinet*), his secretary-general, and various other high functionaries. All are appointed by the authorities at Paris. In addition there are various directors of divisions and bureaus, together with a host of clerks and other employees. The laws regulate the method by which all these subordinate officials are chosen, and they also prescribe the technical qualifications in each case. There is no spoils system, as we have had it in the United States, for the general qualifications are such that the ordinary political henchman cannot fulfill the legal requirements. As a rule the higher positions are filled by promotion from below, and although political influence counts for a good deal in determining these promotions, it is by no means the chief consideration.

The prefect occupies a dual position. He is primarily the local agent of the central authorities at Paris; he is also the executive head of his department. Powers and duties accrue to him in both capacities. As the agent of the central government he is responsible for the promulgation and enforcement of the national laws within his department. He has charge of the various public services in so far as they operate within his jurisdiction—main highways, bridges, jails, poorhouses, and hospitals, together with certain phases of public health and sanitary work, education, the raising of recruits for the army, the taking of the census, the maintenance of public order, the tobacco monopoly, censorship,—the list, if given in full, would cover a whole page. On behalf of the national government he appoints a large number of officials, including school teachers, postmasters and postmen, collectors of taxes, and sanitary inspectors. In the exercise of this appointing power his discretion is greatly limited by the provisions of laws and decrees

The prefect's headquarters and staff.

His dual position.

¹ In the Department of the Seine (Paris) it is known as the Hotel de Ville. This department, as will be explained later, has two prefects.

which fix the qualifications of the appointees; but he has some discretion, and in the exercise of it is usually influenced by the recommendations of senators and deputies.]

Supervisor
of municipal admin-
istration.

[The prefect is also entrusted with the function of keeping a watchful eye on the government of the communes or towns. The annual budgets of these municipalities must be submitted to him for approval; he appoints some of their officers; he can even suspend a mayor or a municipal council for cause.¹ He may issue orders to the mayor of a commune on any matter connected with municipal police administration.] In most of this work the prefect is governed by instructions which come to him from the ministry of the interior, or, in some cases, from one of the other ministries. Usually these instructions are detailed and explicit in character, for in matters of nation-wide concern it is desirable that all the prefects should act alike. But as respects the special problems which arise from time to time in his own department the prefect is generally permitted to use his discretion. The range of this discretion is gradually growing smaller, however, because the prefect can always get into touch with the ministry by long distance telephone, and he is expected to do this whenever he is in doubt. Prefects nowadays do very little on their own responsibility.

His political
activities.

[As local agent of the national government *M. le Préfet* is also a politician, and usually a very active one. It is sometimes said that the first qualification of a good prefect is his skill as a vote-getter—not for himself but for the supporters of the ministry in the Chamber.] At every election his hand is in evidence. He has no scruples about using the extensive powers of his office, and such patronage as he has, for the benefit of his political friends. When his own side loses the election he expects a demotion (and usually his expectations are fulfilled); when it wins he counts on a move upward—a transfer to a more important department. This active participation in politics has made the prefect's position far more difficult than it would be if he were permitted to maintain a strict neutrality; but [prefectoral electioneering has become traditional] in France and some writers on French government have expressed the conviction that the only practicable way to make the prefect's office non-political is to abolish it altogether.

[To understand this curious combination of administration and bossism, it is necessary to bear in mind that Napoleon created the

¹ Subject to a review of his action by the council of state. See *above*, p. 544.

prefect in his own image. He desired to have, in every department, an underling on whom he could rely, who would not stop to ask the reasons for an imperial command. These prefects were to be the doers of his will, not the keepers of his conscience. Naturally, when this system was geared to a republican scheme of government it jolted considerably, and it continues to jolt. For the prefect is no longer the *missus dominicus* of an emperor whose authority passes unquestioned; he is the agent of a minister whose precarious tenure of office depends on the caprice of the deputies.

The theory and the practice of the prefectural office.

The deputy, therefore, has usurped the post of command. When the minister pulls the throttle or applies the brakes it is because the deputy has nudged his elbow. The ministerial deputies from a department insist on having a prefect who is acceptable to them, and the minister will usually make a transfer when they insist upon it. And having installed the right man in the prefecture these deputies then make him repay his obligation by dispensing favors to them and their friends. So the prefect, as one writer puts it, is continually playing see-saw, not knowing when to stand fast in the line of his official duty and when to give way in the interest of good politics.

The deputy as a local boss.

As executive head of his department the prefect prepares all business for the general council. This body, as will be indicated presently, is the elective legislature of the department, but it is forbidden to deal with any matter which has not been laid before it by the prefect. The latter, in this connection, is more than a prime minister, for he has the sole right of initiative. To the general council he submits each year a budget of proposed local expenditures and this budget is passed with such changes as the council may decide to make. But the appropriations, after they are made, stand wholly within the prefect's control; the council has no share in spending them.

The prefect and the general council.

On various other matters the general council may pass resolutions and these, if they are within the law, the prefect carries into effect. But the council no more controls the prefect in France than the legislature controls the governor in any of the American states. In both cases it is desirable that the executive shall work in harmony with the legislature, because the latter controls the appropriations; but this does not mean that the executive occupies a dependent position. The general council cannot remove a prefect, or reduce his salary, or curtail his powers. When the two come into

The council does not control him.

conflict, as they sometimes do, the deadlock is solved by an appeal to Paris. The President of the Republic, on the advice of the minister of the interior, has power to dissolve the general council and to order a new election. Or, if the fault seems to lie with the prefect, he can transfer this official to some other department.]

Importance
of the pre-
fect's office.

[The prefecture as an institution is one of great importance in France, because the entire system of local government is clearly pivoted on it.] Its technical mechanism runs with the precision of an airplane motor. Cabinets at Paris flit in and out of office; ministers abide their destined hour and go their way; but the prefects and their subordinate officers maintain the whole administration as a going concern. France might change from a republic to an empire with very little effect upon the life of the average citizen; but let the eighty-nine prefectures be abolished and the bottom would drop out of the country.]

What he
does for
you.

"Just get yourself born in France," the saying is, "and the prefect will do the rest." Yes, the prefect or his subordinates will give you a birth certificate (*acte de naissance*); they will certify you for admission to school, guard you in person, property, and health, grant you permission to marry,—they will even perform the civil marriage ceremony. They will tell you when your turn comes to serve in the army, count you in the census, enroll you as a voter, take care of you if you become sick or insane, and issue the burial permit when you die. Even more, they will bury you, for the *pompes funèbres* are conducted by the public authorities. The prefect is the little father of his people, the central figure in this seamless web of administrative paternalism. The billboards everywhere are plastered with his white *affiches*, his decrees which regulate all manner of things from the size of city budgets to the price of cigarettes. Nothing seems too inconsequential for a prefect's decree. They fly from his pen like sparks from a blacksmith's anvil. He is as omnipresent as Providence—and his ways are sometimes as inscrutable.

The pre-
fect's wor-
ries.

From all this one may conclude, and rightly, that although the prefect gets a salary of from eighty to a hundred thousand francs a year, he earns every sou of it.¹ The office is one of high prestige and social position; deservedly so, for a successful prefect is no ordinary man. It is not merely that his functions are multifarious.

¹ Prefects are also entitled to retire on a pension after reaching the age of sixty provided at least thirty years have been spent in the government service.

Most of the details he can refer to his subordinates. The difficulty lies in the endless variety of the interests with which he has to deal. Ministers, senators, deputies, subprefects, mayors, and (not least) the general public all look to him for actions which will keep them happy.

For fifty-five years the Third Republic has been trying to harmonize the outward forms of local self-government, as embodied in an elective council, with that spirit of rigorous centralization which is enshrined in the prefect's office. By so doing it has developed a situation in which the prefect must go through gestures of deference to public opinion while actually defying it in accordance with instructions from Paris. It is small wonder that, though striving hard, he often fails to satisfy anybody. He is a buffer between the bureaucracy and the crowd, and the shocks come to him from both directions. "The agent of the government," says Hanotaux, "and the tool of a party, he is also the representative of an area which he administers. He must remain impartial, foresee difficulties and disputes, remove or mitigate them, conduct affairs easily and quickly, avoid giving offence, show the greatest discretion, prudence and reserve,—and yet always be a cheerful, open, and good fellow; he must be always accessible, speak freely, and be neither affected nor churlish; . . . he must pay attention to and conciliate all the opinions, interests, and jealousies which rage around him." ¹ A rather stiff set of specifications for anyone to fulfill, one would think.

He is in a difficult place.

[The general council of the department is made up of councillors who are elected for a term of six years, one-half of them retiring triennially. The voting qualifications are the same as at national elections.] The largest general council (with the exception of the Department of the Seine)² has sixty-seven members; the smallest has only seventeen. This is because each canton elects one councillor, and the number of cantons is not the same in all the departments. [The general council meets regularly twice a year at the chief town of the department, but may be called in special session when necessary. When the council is not in session it leaves an executive committee or departmental commission to exercise routine functions on its behalf. This commission is required

The general council of the department.

¹ Gabriel Hanotaux, *L'Énergie française*, pp. 129-131.

² In the Department of the Seine the general council is made up of the municipal council of Paris, which has eighty members, together with six members from cantons within the department but outside the city.

to meet at least every month but it sits in almost continuous session.)

Its functions.

In a broad way the general council serves as the legislature of the department. It has much to do with the regulations relating to poor relief, public buildings, and, most provocative of all, the traffic rules. But its legislative powers are narrow for three reasons, first, because nearly all important matters are dealt with by national decrees; second, because the general council is forbidden to take up any "political questions" (a term which has been given a very broad interpretation), and third, because its actions may be overruled by the central authorities at Paris. In addition, as has been pointed out, no matter can be taken up by the council except on the prefect's initiative.

The departmental budget.

So the chief function of the general council is to vote the annual budget of the department.¹ This budget is tentatively prepared in the office of the prefect and submitted to the council at one of its regular sessions. It is then discussed, item by item, and changes may be made in it by majority vote of the council, but such changes are subject to veto by the national government. When the budget has been finally approved, the council figures out the amount of revenue needed. Then it apportions among the various arrondissements the sums of money required to cover the total expenditure.

The council is also supposed to examine the accounts of the prefecture but this task it invariably refers to a committee. A few other powers belong to the council, particularly with reference to main highways, bridges, franchises, and public institutions. With actual administration the council has nothing to do, but various questions of administrative policy are submitted to it by the prefect from time to time. Finally, the members of the general council (as elsewhere pointed out) constitute a section of the electoral college which chooses the senators from the department.²

Legal status of the department.

French writers often lay stress on the fact that the department is not a mere administrative district but an area with a corporate personality, with the right to sue and be sued, to hold property, and to make contracts. That is quite true, but it does not alter the much more important fact that the French department enjoys not even a small modicum of home rule. It has no rights that the

¹ The budget provides funds for the maintenance of the prefectures, the court houses, the prisons, and other institutions of correction, besides various roads and bridges.

² Above, p. 439.

national parliament cannot take away. Its officers have no final authority. It has much less home rule than an American county. It has the forms of self-determination, that is all. Its people elect the members of the general council, but this body does not control the executive branch of departmental government. The principle of executive responsibility has not been extended to local government in France as it has been in England.

This system of centralized local government is undoubtedly efficient, but naturally it is not popular with some sections of the people. Centralization never commands popular enthusiasm. So the *tutelle administrative* in France is continually under fire. Its critics are fond of quoting the old proverb that "centralization brings on apoplexy at the center of government and paralysis at the extremities." They complain that it deadens popular interest in local affairs. This, they say, is shown by the scant attention paid to the work of the general councils. As for the prefect his office is the target of a never-ending fusillade from every quarter, and it can hardly be otherwise so long as he is compelled to run with the hares while he hunts with the hounds. It is not improbable, indeed, that the prefect's office would have been abolished long ago if its critics had been able to agree upon something to put in its place. There have been proposals to consolidate the eighty-nine departments into twenty-five "regions," each with a real legislative body and a responsible executive. A few years ago the Chamber of Deputies approved such a plan in principle, but the Senate would not concur and the whole scheme was dropped. Regionalism still has its friends, however, and may soon become a live issue again.

Proposals
for reform.

To an outsider it does not seem that a mere geographical rearrangement would accomplish much. The root of the trouble does not lie in the fact that the departments are too numerous or too small. There are communities in the United States, not half the size of the French departments, which have a very large measure of local home rule. The tradition, not the map, is at fault in France. The old régime which came to an end in 1789 was paternal and centralized in the extreme. The psychology of the people had become so habituated to paternalism and centralization that it could not be transformed overnight, as the revolutionists imagined. During the past hundred years there has been some progress toward decentralization, and this might well be speeded up. Unhappily there are two reasons why it cannot easily be acceler-

The difficulties in
the way.

ated, and the first is the fact that the masses of the people in the rural districts are making no demand for it. They are not moved by considerations of political theory. Their inclination is to let well enough alone. The second reason arises from the ardent desire of ministers and deputies to keep all the local patronage that they now control. Any reorganization of local government would inevitably take most of this away—and from the politician's point of view any reform that takes away patronage is an undesirable reform.

The arrondissement.

(The departments, as has been said, are divided into arrondissements.) Prior to 1926 there were 276 of them, but in that year the number was reduced to 170. (These districts are not named but numbered—first, second, third arrondissement. Each is a department in miniature, with an appointive subprefect and an elective council made up of one member from each canton within the arrondissement. The subprefect, as his title implies, is merely the agent of his chief. Of themselves the subprefects have no independent powers, or almost none. They are merely the channels through which the prefect obtains information and transmits his orders—the prefects' "letter boxes" they are sometimes called. The chief reason for their existence may be found in the simple fact that no prefect can attend to all the details of local government. The subprefect relieves him of minor functions, both administrative and political.

The subprefects.

What they do.

The subprefecture, accordingly, is a busy place with a considerable staff and a large amount of clerical work to be done. The subprefect is responsible for the efficient performance of all this routine; in addition he spends no small amount of his time on the political warpath. He is the Gallic analogue of the American ward boss, and like the latter is deeply concerned with the loaves and fishes of politics. These subprefects are not only the fingers but the eyes and ears of the ministry. They attend all gatherings of a political nature to see what is going on, for it is their duty to keep their superiors well posted. Every subprefect hopes for promotion, and the fulfillment of this hope depends upon making friends among the supporters of the ministry in the Chamber of Deputies.

The arrondissement councils.

The council of the arrondissement has little more than nominal functions to perform. It makes no laws and votes no money. Until a few years ago it had the duty of allotting the departmental

tax quotas among the communes, but even this perfunctory task has now been taken away. The members of the council are ex-officio entitled to sit in the electoral college of the département (which elects the senators) and that is the main reason why the arrondissement councils are continued in existence. Were it not for this electoral function they might readily be abolished. Unlike the department on the one hand and the commune on the other, the French arrondissement is not a corporate entity and owns no property. It is a purely administrative unit.¹

Finally, there is the commune. It is the only area of local government that antedates the Revolution.) The American mind, filled as it is with distinctions between townships, villages, towns, boroughs, and cities, finds difficulty in grasping what a French commune really is. The French municipal code defines it as "any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognized by any subsequent law or decree." As a matter of fact the term includes everything that would be called a municipal corporation in the United States—whether city, town, village, or township. (A commune is any community, big or little.) Marseilles is a commune; so are Lille, Bordeaux, Toulon, and Lyons; so is Château-Thierry; so is every little hamlet in which American troops were billeted during the days of the great push through the Argonne. Some of these little communes have fewer than fifty inhabitants.

The communes.

All in all there are about 37,000 communes in France. In France there is no distinction between city government and village government. The one is merely an expanded form of the other. They are all governed under the provisions of the same municipal code.) This, in some ways is a serious defect; for a city is a good deal more than a village writ large. Its problems differ not only in extent but in character. The French government has recognized this to some extent by providing the bigger communes with larger municipal councils and some additional administrative machinery, while holding broadly to the principle of uniformity.)

All created equal.

(The government of the commune is a relatively simple affair,

¹ Each arrondissement, as has been said, is divided into cantons, but the canton likewise has no corporate organization. It is merely a geographical division, a sort of enlarged ward, which serves for various electoral and judicial purposes.

² The best commentary on the French municipal code is Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923).

Their frame
of govern-
ment:

1. The
council.

as local governments go. Each commune has a municipal council of from ten to thirty-six members, depending upon its population.¹ The councillors are elected for a six-year term and serve without pay.² The qualifications for voting at council elections are the same as in national elections. In the small communes the whole council is chosen on a general ticket, but in the larger ones there is a division into wards, each of which elects a portion of the council. (This municipal council is the dominating factor in local government, for it not only makes the appropriations but elects the mayor and the other officials who have the spending of the money. Some of its powers, however, are limited by the supervision of the prefect.)

2. The
maire.

(The first duty of a newly elected municipal council is to choose a mayor (maire). This it must do from within its own membership; it cannot (like the English borough council) make its choice from outside. (The mayor is chosen to hold office during the same term as the council; and although serving as chief executive of the commune, he continues to be a member of the council and acts as its presiding officer. There is no separation of executive from legislative functions in the French city. Invariably the mayor is a man who has already served one or more terms in the council and has become a recognized leader in its work. Sometimes the whole council election turns on the question of reëlecting or not reëlecting the mayor.

Reëlections are common, and in some of the smaller communes the mayor holds his place as long as he wants it. He is a quaint figure in these little communities—with his tall hat, his tricolor sash, and his air of overpowering importance. In the large communes, or cities, the mayor is usually a prominent politician and sometimes is a member of the Chamber of Deputies or even of the ministry. A conspicuous example is Edouard Herriot, the perennial mayor of Lyons. The administrative duties of a French mayor are not onerous, and he is able to devote much of his time to public service in other capacities.

3. The ad-
joins.

(The council of the commune also selects, from within its own membership, one or more adjoints or assistant mayors, who hold office for six years but continue to be regular members of the

¹ This maximum of thirty-six is exceeded in two cases, namely, in Lyons which has 54 councillors and in Paris which has 80.

² The term was four years until 1929, when it was lengthened by two years.

council.¹ The mayor, the assistant mayors, and the councillors all sit together and constitute the government of the commune. The only difference between the smaller and the larger municipalities is that the latter have more adjoints and bigger councils. There is no difference in the powers of the various municipal authorities or in their relations to one another. So, if you describe the government of one French town your description will serve for them all. The American student of municipal institutions need not be reminded that nothing of that sort is true in his own country.

Although the mayor of the French commune is not an independent executive officer like the American mayor, he is by no means a figurehead. He has considerably more authority than the mayor of an English borough. Between the American and the English mayor, in other words, he stands midway. The council elects him (as in England), but thereafter it cannot remove him, nor has it any direct control over his actions. Still, this lack of direct control is not a matter of much practical importance for two reasons: first, because the council does not choose a mayor unless it is reasonably certain that he will work in harmony with it, and, second, because the mayor has no way of getting money unless the council gives it to him. Even the money to pay his own official expenses must come in that way.² Hence, although he may not be a responsible executive in the ordinary sense, he is under bonds for good behavior.

Powers of
the mayor:

The French mayor, like the prefect, occupies a dual position. In some matters (for example, in matters relating to police, public health, finance, the taking of the census, and the application of the laws relating to military service) he is the agent of the higher authorities. Decrees go from Paris to the prefects of departments, from the prefects to the subprefects, and from the subprefects to the mayors. The mayors then promulgate them to the people. When necessary, the mayor issues his own arrêtés or local edicts supplementing these decrees. The higher authorities may suspend or remove a mayor from office if he fails to carry out their instructions.

(a) as the
agent of the
higher au-
thorities.

¹ In the smallest communes there is one assistant mayor; communes of from 2500 to 10,000 population have two; those of 35,000 have three, and so on. The largest communes have twelve with the exception of Lyons which has seventeen. Paris, as will be seen later, has no adjoints; it has two prefects and twenty maires.

² The mayor receives no regular salary but the council is permitted to vote him, each year, an allowance for expenses. This "allowance" in the larger communes is virtually equivalent to a salary.

(b) as the chief executive of the commune.

On the other hand the mayor performs various functions as the chief executive of his commune. In this capacity he carries out the resolutions of the municipal council. He appoints the local administrative officers, prepares the budget for submission to the council, and tries to keep the administration of his commune running smoothly. In the larger municipalities he distributes some of his responsibility among the adjoints or assistant mayors. To one he gives the function of looking after the streets, another takes charge of fire protection, another of sanitation, and so forth. In this way the assistant mayors serve as titular heads of departments. But they do very little real work in connection with the departments for which they are technically responsible. They leave the work to the professional administrators who are paid for doing it. When the mayor is absent, an adjoint serves in his stead. The mayor does not choose these assistants, and cannot remove them, but if need be he can take an adjoint's duties away and leave him unattached.

The permanent staff.

(Neither mayors nor assistant mayors are professional administrators. They are laymen, elected by the people and then appointed by the council. They receive no salaries from the municipal treasury and hence can give only a portion of their time to the public service. It is true, of course, that the practice of reëlecting adjoints gives them more familiarity with the affairs of the commune than one customarily finds among the elective officials of American cities, but they do not attempt to manage the business of the municipality upon their own knowledge. The actual work of city administration, in France as in England, is performed by permanent, expert officials who are appointed on the basis of qualifications prescribed by law. This does not mean that local politics play no part in such appointments or in the making of promotions. They do, to a considerable extent. But no amount of political influence will avail to give any man an important post of administrative responsibility in a French city unless he has certain technical qualifications.

Layman and expert.

(Ostensibly the French city is governed by laymen; in reality the administration is dominated by experts. Prominent among these is the *secrétaire de mairie* or city clerk. In the small communes he is usually the local schoolmaster; in the larger ones he is a full-time official who takes a large part of the mayor's responsibilities off his shoulders. Every municipal service in the larger

French towns (public works, sanitation, health, and so forth) has its full staff of professionals, and together they form a very efficient administrative machine. There are no loose ends in French municipal government.

The French municipal council, unlike the council of an English or American city, does not meet once a week or once a month. Like a legislature it holds its sessions day after day until the business is finished, and then takes a long recess. As a rule there are four sessions a year, each lasting from two to six weeks. Its powers, according to the municipal code, are of the widest extent. "The council," in the words of this enactment, "regulates by its deliberations the affairs of the commune." Nothing could be much more comprehensive than that.

The work of the council.

But as a practical matter, the authority of the council is emasculated by the necessity of obtaining the prefect's approval for many of its decisions before they become valid. In the field of municipal finance, particularly, this requirement operates as a great restriction upon its powers. The national government deals out authority with a generous hand but it cuts the cards. Broadly speaking the council takes the initiative in most matters of municipal government except finance, police, and education. It may adopt resolutions relating to various questions of municipal policy and if these are not annulled by the higher authorities, the mayor and his adjoints see that they are carried into effect. Prefects and subprefects everywhere keep a watchful eye on all the municipal authorities. "Act on your own initiative," they say, "but if you try to do anything imprudent we will interfere." This interference, as a matter of fact, comes rather frequently, and results in a good deal of complaint on the part of the mayor and councillors.

The prefect keeps a close eye on it.

Whether by reason of this strict supervision, or in spite of it, French cities have been well governed. They have been better governed, on the average, than the cities of the United States. There have been few municipal scandals of any consequence. The city's money has been honestly spent, and good value has been obtained for it. The grosser forms of malfeasance and peculation, which have been so common in the cities of the United States, are virtually unknown in France. Contracts are fairly awarded to the lowest bidder; the spoils system has been kept in control; the officials of the various departments have been given security of tenure; and the police have remained honest. It is sometimes said

French cities have been well governed.

that French cities are unprogressive, that they let their affairs run in a rut and are slow to adopt new methods. There may be some truth in this; but it is to be remembered that French cities have been growing very slowly and hence have not had need for much replanning or for large reconstructions in their public services. The French temperament, moreover, is not given to exuberance over anything for the mere reason that it is new. Even were central supervision to be relaxed it is not probable that the cities of France would go chasing will-o'-the-wisps at the behest of reformers.

The gov-
ernment of
Paris.

A word should be added with reference to the government of Paris. The French capital is under a special dispensation, and there are several reasons for its being so placed. Paris is the largest city in France, five times as large as its nearest rival, Marseilles. It is the seat of the national government with an enormous amount of national property within its bounds, including legislative and executive buildings, museums, libraries, palaces, and public monuments. Paris, moreover, has been a troublemaker in Israel. It is the point from which all the revolutions and coups d'état have emerged. History is to a nation what memory is to man—and a burnt child dreads the fire. Although Paris has never contained more than ten per cent of the French population, the city has been responsible for at least ninety per cent of the nation's political vicissitudes. The city on the Seine is both the head and the heart of France. The Third Republic is not going to take any chances on its good behavior.

The two
prefects and
the munic-
ipal coun-
cil.

Paris virtually covers a whole department, the Department of the Seine, and is governed as such by a prefect. Unlike the other eighty-eight departments, however, it has an additional prefect, known as the prefect of police, whose function is the maintenance of law and order. Both prefects are appointed by the President of the Republic, acting upon ministerial advice. There is also a municipal council of eighty members, four from each of the twenty arrondissements into which the city is divided. With the addition of certain members from communes just outside the city (but within the Department of the Seine) this municipal council serves also as the general council of the department.

The Paris
wards or
arrondisse-
ments.

Paris, therefore, has no mayor in the American sense. But the administrative heads of the twenty arrondissements are called mayors, although they are in reality subprefects. They are chosen

in the same way as subprefects and have similar functions. A large portion of the city's routine work is performed at the headquarters or *mairie* of each *arrondissement* and is not concentrated at the city hall as in American cities. This attempt to combine the government of a city with that of a department has resulted in the creation of a curious hybrid. There is a centralization of power and a decentralization of functions. The prefect of the Seine is the dominating factor in Parisian government but like all the other prefects he is merely the agent of the ministry. The city council votes the budget, and it has some other important powers; but it does not control the city administration.

Many Parisians are dissatisfied with this arrangement and there has been a persistent clamor for a greater degree of metropolitan home rule. Thus far, however, the clamor has availed nothing because the French parliament is made up, for the most part, of senators and deputies from the rural areas and small towns who look upon the capital with suspicion. Their attitude toward the City of Light continues to be a strictly bucolic one. The recollection of barricades, jacqueries, the Red Terror, and the Commune of 1871 still haunts the rural French mind. "Paris belongs to France," they say in the provinces, "and France must control its administration." This might sound strange to American ears were it not for the fact that precisely the same doctrine is applied to Washington. The Department of the Seine is not allowed to manage its own affairs—neither is the District of Columbia,—but that is another story and one which does not belong in this book.

The French capital, like the American, wants home rule.

The subject of French local government in its various phases is fully treated in all the standard works on French administration (see *above*, p. 549). Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923) is the most useful book on the government of the commune. There are eight chapters on French municipal government in William B. Munro's *Government of European Cities* (revised edition, New York, 1927), pp. 205-336. A full bibliography is those appended (pp. 413-423). On the government of Paris the best book is Eugène Raiga and Maurice Félix, *Le régime administratif et financier du département de la Seine et de la ville de Paris* (Paris, 1922).

CHAPTER XXX

FRANCE AS A COLONIAL POWER

The physiognomy of a government may be best judged in its colonies, for there its features are magnified and rendered more conspicuous.—*Alexis de Tocqueville*.

Greater
France:

France, like Great Britain, is a great colonial power, with possessions scattered all over the globe. She is to-day more distinctly a world power than she has ever previously been, even under the Bonapartes. The European territory of France covers a little more than 200,000 square miles, which is less than the area of Texas. But the tricolor flies over more than a million square miles outside Europe—in Africa, in Asia, and in America.

Her popu-
lation.

The population of France herself is less than 40,000,000; but the French overseas possessions, including Algeria, the colonies, the protectorates, and the mandated territories, have a combined population of almost 60,000,000. Apart from the commercial possibilities which may be available in these varied possessions this reservoir of man-power is of the utmost importance to France, because it serves to counterbalance, in some degree, the numerical weakness of the French in Europe. The failure of her own population to grow at the rate maintained by her neighbors has given France a serious problem, especially in connection with her desire for security.

France and
England as
colonial
powers:

The anal-
ogies.

France and England, as colonial powers, afford some interesting analogies and some striking contrasts. Both made a belated entry into the field of colonial expansion, having delayed until after Spain and Portugal had taken what then seemed to be the choicest territories in the new world. But although they began late, both France and England made rapid progress. Both obtained a strong foothold in America, and both undertook to get control of India. Both lost their first colonial empires in the latter half of the eighteenth century, the one by conquest, the other by revolution. Both began the creation of a second colonial empire, and during the nineteenth century both succeeded in acquiring great tracts of territory in various regions of the globe.

But the analogies are outweighed by the contrasts. The British empire of to-day has been built up, for the most part, by private initiative, by the activities of traders and commercial companies. In English colonization the merchant has invariably gone ahead, dragging his government after him. He has been the advance agent of civilization. In French colonization, on the other hand, the government has assumed most of the initiative. The commercial exploiter has usually waited for his government to lead the way, or, at any rate, to encourage him with an assurance of protection. Dr. Johnson, sipping his seventh cup of tea, once expressed amazement that anybody should voluntarily go roaming in far-off lands when it was so much easier to sit comfortably at home. But pioneering has been the sport of the Saxon. There is a roving strain in his blood. His neighbors across the Channel have not been moved by it in the same degree.

The contrasts.

There are other differences. England's colonial policy has been unsteady and opportunist, while that of France has been guided by a fixed and consistent purpose. It has sometimes been said, and with some truth, that the British empire was not built up by the government, but in spite of it. In France the government has always aided colonization. England, again, has specialized in the middle latitudes, while France has devoted most of her energies to the tropics. Her principal dependencies—Algeria, Tunis, Madagascar, Indo-China, the French Congo, Somaliland, French Guiana—are all tropical territories. It is for this reason, among others, that the French have not had to wrestle much with difficult problems of colonial self-government and with demands for self-determination. On the other hand, France has given some of her outlying territories the privilege of being represented in the home parliament, which Britain has not yet done. As a final difference, the French are still inclined to look upon their colonies as areas of exploitation which exist primarily for the benefit of the mother country, although this point of view is gradually being changed. England, as regards her great dominions, abandoned it long ago.

Attitude of the two governments.

"Happy the land whose history is dull!" It was a Frenchman who said it, but there is no tedium in the annals of his own country. No other land has its pages of history so crowded with victory and defeat, success and disaster, glory and humiliation, each following the other in quick alternation. For five centuries no other country has been so consistently mixed up in the turmoils of humankind.

France as a factor in world politics.

Modern history records very few international episodes with France left out. To some extent the explanation of this ceaseless activity may be found in the location of the country, but it is also due in part to racial emotionalism. France sits in the very center of Europe, a quadrilateral with a frontage on two seas. She is neither a North-European nor a South-European country; she is both. Six nations are on her flanks,—England, Germany, Belgium, Spain, Italy, and Switzerland. No other great power has so many immediate neighbors. No other great nation, accordingly, has had so strong an incentive to become involved in the meshes of European diplomacy. Geography has denied France the factor of isolation which has profoundly affected the history of England, and to an even greater extent the history of the United States.

The Gallic
race.

There is no race of men, moreover, exactly like the Gallic race. Frenchmen stand together, a compact and coherent mass, the most homogeneous in Europe. Heirs to the Roman tradition they have always believed themselves to be the salt of the earth. Their manifest destiny they have taken for granted. Hence the policy of the nation has been more often guided by emotion and sentiment than by reason and cool calculation. Frenchmen are willing to be liked or disliked, as the rest of the world may please; but they are not willing to be ignored. A great race, none the less, and one that has contributed its full share to progress in every field. At any rate it is to racial inheritance, as well as to geography, that France owes her strong nationalism, her restless diplomatic activity, her ability to bear overwhelming disasters, and her extraordinary powers of recuperation.

Rise and
fall of the
first colo-
nial empire:
1. In Amer-
ica.

During the sixteenth century, when the various countries of Europe engaged in the great race for colonial possessions, France was the premier nation of the continent. Her population was three times that of England. Her wealth was greater, and more widely diffused among the people. Yet the French were the last to enter the field of overseas expansion, and when they got busy all the best territories were gone. Spain and Portugal had acquired Central and South America; England had entrenched herself in India and along the Atlantic seaboard. France had to go farther north to Acadia and the Gulf of St. Lawrence. Yet the French made a brave attempt to establish a Bourbon empire in the new world and by 1750 they were in the way of succeeding. At that date France possessed the whole region north of the St. Lawrence

and the Great Lakes, together with what is now the American Middle West, part of the Northwest, and Louisiana. The French were also striving to make good their claim to the entire Mississippi Valley; they were moving along the Ohio and had conceived the ambitious plan of hemming the English colonies between the Alleghenies and the sea. By the middle of the eighteenth century they were in control of the great water routes between the Gulf of St. Lawrence and the Gulf of Mexico, with their trading posts stretching all the way from the one to the other. Had France been able to hold this long entrenchment, how different the history of the new world would have been!

In India also the French arrived late but made rapid progress when they came. The expansion of their power in the East was so rapid, indeed, that they were nearly on even terms with the English when the great duel between the two nations began. For more than a decade they fought it out on three continents. At the white man's behest, as Macaulay says, brown men knifed one another on the coasts of Coromandel and red men scalped each other on the shores of the St. Lawrence. In the end France was the loser, east and west. By the Treaty of Paris she gave up her dominion over palm and pine. Virtually her whole colonial empire passed into English hands. The date of this treaty, February 10, 1763, was a great day in the chronicles of the sceptered isle. Never did England sign such a peace before.

In the management of her first colonial empire France had not displayed a high degree of imperial statesmanship. Her policy had the vices of Roman expansion without the virtues. Her colonies were regarded as areas of exploitation, nothing more. They were ruled with an iron hand and given no vestige of local self-government. Those who have read Parkman's immortal volumes on the French exploits in Canada need not be told that no Roman province was ever more completely delivered into the hands of publicans and sinners.¹ Much has been said and written about England's oppression of her American colonies during the first half of the eighteenth century, and it is beyond question that the colonies along the Atlantic seaboard had some genuine grievances. But let the student of colonization place the institutions of New England and New France side by side during this period. He will find that

2. In India.

The old colonial policy.

¹ The most interesting book of history ever written by an American is Francis Parkman's *Old Régime in Canada*. It is on the shelves of every public library.

English colonial policy, with all its shortcomings and mistakes, was by far the more generous and enlightened of the two. All the political iniquities of pre-revolutionary France were transported to her colonies and became more conspicuous there than at home. They were enlarged as through a microscope.

The Napoleonic interlude.

The French took the loss of their first colonial empire philosophically. Their colonial ambitions were not abandoned but deferred—necessarily deferred because France was on the eve of grave troubles at home. The rumblings which preceded the Great Revolution of 1789 could already be heard. It was not until this era of chaos had been definitely ended by the rise of Napoleon that the French government could once more turn attention to the problem of acquiring colonies. Bonaparte had great plans in this direction. It was his dream to revive the empire of the Cæsars. He hoped to conquer the whole of North Africa and make it tributary to France as it once had been to Rome. This would give him a base from which he could strike at India and eventually wrest it from English control. His eagles would fly over mosque and temple. Herein lay the explanation of his expedition to Egypt and his battle of the Pyramids. But the Napoleonic vision came to naught, as it was bound to do, so long as England held control of the seas.

The second French colonial empire:

Algeria.

The Napoleonic era left France exhausted, but still with colonial aspirations. The idea of extending the French sway over northern Africa had captivated the national imagination. And in truth it seemed easier for France to expand in this direction than in any other. Here was good territory, close at hand, and supposedly easy to conquer. The opportunity to make a start was presented in 1827 when the native ruler of Algiers declined to make amends for an insult to the French consul-general. So his city was bombarded, and when this did not bring him to terms an expedition was conveyed across the Mediterranean. In the end the whole of Algeria was subdued, but only after an unexpectedly long and expensive campaign. Then the country was annexed to France.

Its area and population.

This annexation virtually doubled the territories under French control, for Algeria is slightly greater in area than France herself. It contains some highly fertile plains and valleys within easy access of the Mediterranean coast, together with a great hinterland which is mountainous and of limited value for cultivation. This region, however, has considerable mineral wealth, most of which is still undeveloped. The total population of Algeria is about six mil-

lions, of whom only ten per cent are Europeans, chiefly French and Spanish. The rest are of mixed blood, for Algeria has been at various times overrun by the Phœnicians, the Romans, the barbarian tribes of Europe, and the Mussulman Arabs, each of whom left their racial imprints. On the whole the natives are much above the general level of African stock, this being due to their long and continuous intercourse with Europe. Agriculture, including the raising of cattle and sheep, is the chief occupation of the people, and Algeria sends large quantities of foodstuffs to France. There is free trade with France both ways, except in the case of a few enumerated commodities, especially sugar and tobacco.

The government of Algeria has at its head a governor-general, who is appointed by the President of the Republic on the recommendation of the minister of the interior. Under the supervision of this minister the governor-general has charge of the military forces and of police administration. He prepares the annual budget, which is voted by the French parliament but is kept separate from the regular national budget. Before being sent to Paris the Algerian budget is discussed and voted by the financial delegations and by the superior council. The governor-general of Algeria is assisted by two councils, one consultative and the other deliberative. The former is wholly appointive and has advisory functions only; the latter, known as the superior council, is made up in part of high officials and in part of councillors elected by French residents. In addition to voting the budget it has various powers with reference to public works and the supervision of local government. It is sometimes said that there are three financial delegations: those which are elected to represent the French colonists, the taxpayers other than French colonists, and the Mohammedan natives respectively. But it is more accurate to speak of them as three sections of the same body. The financial delegations must have all questions of taxation and expenditure submitted to them. They can cause action to be deferred on any expenditures which are not designated as obligatory.

Its govern-
ment.

Algeria is divided into three departments (Algiers, Oran, and Constantine), each of which is governed by a prefect and a departmental council, much after the fashion of the eighty-nine departments in France.¹ But the members of the departmental councils

Local gov-
ernment in
Algeria.

¹ A portion of the country, known as the Territories of the South, is not included in any of these departments but is under military rule.

in Algeria are not chosen by all the people. The suffrage is restricted to French citizens. This does not shut out all but Frenchmen, however, for in 1919 French citizenship was extended by law to natives above the age of twenty-five who served in the world war, or who are owners of land, or who can read and write. In addition to the elective members of the general councils, certain councillors are also nominated by the governor-general to represent the unenfranchised natives. The departments, as in France, are divided into arrondissements and within the latter are numerous communes or municipalities.

The military establishment.

France maintains a considerable military establishment in Algeria including both French and native troops. Algerians are under obligation to serve with the colors under the laws relating to universal military service, and the native divisions form part of the French regular army. The officers and a proportion of the non-commissioned officers are French. The renowned Foreign Legion also has its headquarters in Algiers and is recruited from foreigners of all nationalities.

Tunis.

From Algeria the French eventually spread over into the contiguous territory of Tunis, which is of historical interest as the seat of ancient Carthage. Tunis is about the size of Arkansas and has a population of slightly more than two millions, of whom less than ten per cent are Europeans. This European element, moreover, is chiefly Italian, not French. The bulk of the native population is Mohammedan. Part of the country is mountainous with large and fertile valleys; other portions are desert with great oases suitable for date culture. There is also a good deal of mineral wealth in Tunis, including large stores of phosphates. The other powers of Europe saw no reason to interfere with French expansion in Tunis, and indeed the German government, after the war of 1870, encouraged France to go ahead in the hope that the diversion of French energies to Africa would make the country forget Alsace-Lorraine.

The Bey and the resident-general.

So Tunis was invaded and became a French protectorate in 1881, which technically it still continues to be, although it has become to all intents a French colony. The Bey of Tunis is still the titular sovereign, but virtually all authority belongs to a French resident-general who is appointed by the President of the Republic on recommendation of the French foreign office. This resident-general serves as minister of foreign affairs in the Tunisian minis-

try. With him are ten other ministers, chiefly French officials, who serve as the heads of remaining executive departments in the protectorate. They are nominally appointed by the Bey of Tunis but in reality are chosen by the minister-resident in consultation with the French foreign office.

In 1922 a parliament, known as the grand council, was established in Tunis. It is made up of two sections, one representing the French and the other the natives. The method of choosing the French section is determined by the resident-general;¹ the members of the native section are designated in part by the regional councils and in part by organizations representing the agricultural, industrial, and trading interests. This grand council has authority over all items in the Tunisian budget except those designated as mandatory,—for example, interest on the public debt, the salary of the resident-general, and so forth. Tunis is not divided into departments but into regions, with a French comptroller in charge of each. There are regional councils, moreover, made up of members indirectly elected and possessing a certain amount of control over regional expenditures.

The grand council.

On the other side of Algeria is Morocco, a territory which managed to retain its independence until long after all the others had lost it. This was partly because Spain and England, as well as France, were casting covetous eyes upon the Shereffian empire. Each was unwilling that any other country should capture the whole prize. In 1904, however, France and England came to an agreement by which the French were promised liberty of action in Morocco so far as the English government was concerned. Later in the same year a compact was concluded between France and Spain whereby the Spanish government, in return for certain concessions on the Moroccan coast, also promised the French a free hand in dealing with the country. Thus the stage was duly set for a further expansion of French imperialism in northern Africa when a new factor was injected into the situation. From Berlin came the announcement that the German government did not recognize these Anglo-Spanish-French agreements and would not be bound by them. This action aroused so acrid a feeling in both France and Germany, that it brought them almost to the verge of war; but in 1906 an international conference at Algeciras

Morocco.

The German intervention.

¹ They are, in fact, chosen by the local chambers of agriculture, chambers of commerce, and chamber of mines.

(in which the United States was represented) agreed upon a compromise which preserved the independence of the sultan, guaranteed the integrity of his territory, and provided for freedom of trade with equal privileges to all countries.

Algeciras
(1906) and
the Agadir
incident
(1911).

This compromise did not settle the main issue. The Germans wanted some Moroccan territory for themselves but were outvoted at Algeciras and much chagrined in consequence. But they did not abandon their hopes and in 1911 the German government gave Europe another war scare by sending a gunboat to Agadir, one of the Moroccan ports, under circumstances which could not be regarded otherwise than as an act of unfriendliness to France. It was not that the Germans expected to obtain any part of Morocco at this stage. What they were after was the recognition of an interest which could be traded with France for territories elsewhere. Their diplomacy in this respect was for the moment successful in as much as the French agreed to give Germany certain territories in equatorial Africa, in return for which France was allowed to establish a protectorate over a portion of Morocco (1912). In the same year the French and Spanish governments agreed on the limits of their respective zones. Tangier, the capital, had previously been neutralized and put under international control.

The French
protector-
ate (1912).

The final
settlement.

But in spite of this settlement, Morocco continued to be a rankling factor in European diplomacy until the outbreak of the world war, for both parties to the compact were resentful. The French people believed that they had been hijacked out of their lawful spoil. The Germans, far from looking upon the arrangement as final, regarded it as a mere day's march on their journey to a larger place in the sun. It was not until the close of the world war that France obtained the opportunity to settle the matter in her own way. The Treaty of Versailles contained a provision requiring Germany to abandon all that she had obtained in privileges and compensations during the years 1906-1911.

Present
govern-
ment of
Morocco.

Morocco is now divided into three zones—Tangier (which is administered by an international commission), a Spanish zone along the Mediterranean, and all the rest of the country which is a French protectorate. The French zone is by far the most extensive and embraces an area as large as France herself, with an estimated population of nearly six millions. This territory is still governed in the name of the sultan, who is both the civil and religious ruler of his people. But since 1912 his civil authority has

been controlled by a French resident-general who is appointed by the President of the Republic on recommendation of the French foreign office. There is a ministry, as in Tunis, but as yet no representative council. The agricultural and industrial possibilities of Morocco are not yet definitely known, for the interior of the country is still unoccupied by the French.

The African dependencies of France are not confined to the Mediterranean region.¹ Reckoned in square miles, the French have more territory in Africa than the English. But this is because France owns the whole of the great Sahara desert—a tract of imperial vastness which has very little value unless it can be irrigated. Other African territories owned by France are Senegal, Guinea, the Ivory coast, Dahomey, the Niger region, and the Somali coast, the whole with a population of about thirteen millions. The French Congo, in equatorial Africa, is a large and valuable tract bordering the Belgian Congo. By the Treaty of Versailles the French obtained the mandate for a large part of two former German colonies, Togoland and the Cameroon, on the West African coast.

Other
French pos-
sessions in
Africa.

The island of Madagascar, on the east coast, is larger than France, although one may not realize it from a glance at the world map. The French took possession of this island nearly two hundred years ago and then abandoned it. Later they went back and declared it a French protectorate, which it remained until 1896 when it became a colony. Madagascar supports a population of nearly four millions, but the French inhabitants number only about fifteen thousand. It is ruled by a governor-general who receives his instructions from the minister of colonies in Paris. The governor-general is assisted by an advisory council and there are financial delegations as in Tunis. The island is divided into provinces with French commissioners in charge.

Madagas-
car.

In Asia the French have maintained a foothold for nearly three hundred years. By the Treaty of Paris (1763) they surrendered most of their holdings in India but were permitted to keep Pondichéry and a small tract along the Coromandel coast. This territory France still retains but she has never been able to expand it, for the rest of the Indian peninsula is under British control. Further to the eastward, however, the French have built up a valuable empire in Indo-China. This is made up of five depend-

The French
colonial em-
pire in Asia.

¹ The island of Corsica, it may be mentioned, is not a colony but is governed as an integral part of France.

encies,—Cochin-China, Cambodia, Annam, Tonkin, and Laos—which have China to the north of them and Siam to the west. Together these dependencies have a population of about twenty millions. Cochin-China is a colony; the others are still called protectorates. In partial keeping with this status there is a governor-general for the entire territory, a governor in Cochin-China, and a resident-general in each of the other states. The governor-general is assisted by a superior council, the members of which are either ex-officio or appointive. There is a single budget and a uniform tariff for the whole of Indo-China.

The islands.

The island of Reunion, in the Indian ocean, also belongs to France. In the Australian archipelago the island of New Caledonia and some adjacent islands belong to her, and in the South Pacific there are various French islands, among which Tahiti is the best known. From the wreck of her first colonial empire France salvaged a few possessions in the new world. She still holds two small islands (St. Pierre and Miquelon) off the coast of Newfoundland which are used as the headquarters of the French fishing fleet and since the adoption of the Eighteenth Amendment in the United States have served as the main base for a fleet of rum runners also. France also retains two islands in the Caribbean (Martinique and Guadeloupe), and holds dominion over French Guiana on the northeast coast of South America.

Syria.

Among the mandates given to France at the close of the world war, one is of special importance—the mandate for Syria. This territory includes a broad coastal strip of the old Turkish empire, with an area of about sixty thousand square miles and a population of three millions. The population is largely of Arab origin, and Arabic is the language most generally used, but there are large foreign elements in the towns, particularly in Damascus, Aleppo, and Beirut. The land is agricultural with no great mineral resources. France maintains a small army of occupation in the country and carries on the civil administration through officials who are under control of the French foreign office. Reports concerning their work are regularly made to the Mandates Commission of the League of Nations. With Great Britain, the French also share a condominium over the New Hebrides.

Representation of the colonies in the French parliament.

Mention has been made of the fact that some of the French colonies (not including the protectorates) have been accorded representation in the home parliament. This is a concession which Eng-

land has not made to any of her dominions. The United States has given the Philippines and Porto Rico the right to send commissioners to the House of Representatives at Washington; but these insular representatives are not regular members of the House and are not privileged to vote. The senators and deputies from the French colonies have full rights of membership in their respective chambers. In addition to the representation from Algeria there are four senators and ten deputies representing the overseas possessions of France. This representation is allotted arbitrarily, not on a basis of area or population. Réunion, Martinique, and Guadeloupe have each one senator and two deputies; French India has one senator and one deputy; Senegal, Guiana, and Cochin-China have each one deputy but no senators. The other colonies have no representation. Both senators and deputies are chosen by the French citizens, including natives who possess certain nominal qualifications, but most of the natives take no part in the elections.

As a plan of colonial representation, this arrangement is quite inadequate. It leaves some of the newer and most important colonies (notably Madagascar) without recognition. As respects the represented colonies it affords a useful channel for the presentation of their grievances and petitions, but beyond this it has little value. In a Senate of over three hundred members, and a Chamber of six hundred, the colonial delegations form a rather diminutive bloc. Their support on any measure is hardly worth making a bid for. Moreover, it has been the frequent practice of the colonies to select, as their senators and deputies, Frenchmen who are already active in politics at home and who sometimes have no special knowledge of colonial conditions. There is a common impression that these colonial senators and deputies do not accurately reflect the public opinion of the colonies from which they are accredited, but merely the wishes of the French officials who dominate the colonial elections.

Inadequacy
of the plan.

To be logical the French ought to give representation to all their dependencies, or to none at all. But they are not likely to follow the dictates of logic in this matter. The practice of giving representation to the colonies was inaugurated by the First French Republic, revived by the Second, and made a fixture by the Third. But in making it a fixture the Third Republic was not willing to go the whole way. Spain and Portugal have granted representation to all their colonies; Great Britain has given it to none. France

accords representation to some colonies and not to others. The United States has pursued a fourth plan, by giving nominal representation to Porto Rico and the Philippines but not permitting the insular representatives to vote.

The colonial
councils.

Prior to 1920 the four senators and ten deputies from the represented colonies, together with delegates from the non-represented ones, made up a colonial superior council which convened in Paris and advised the minister of colonies on matters which he submitted to it. But in the latter year this single body was replaced by three advisory councils which are now respectively known as the high colonial council, the economic council, and the council of colonial legislation. Each has a separate field of advisory jurisdiction.

The minist-
ry of col-
onies.

The minister of colonies is the chief supervisor of French colonial affairs. He is chosen in the same way as the other French ministers, and like them is responsible to the Chambers. He has general charge of all the territories belonging to France or under French protection outside of Europe, with the single exception of the territories in northern Africa. The French colonial ministry is organized on an elaborate scale, with various services and bureaus. Each bureau is concerned, not with a group of colonies, but with some branch of colonial activity,—for example, colonial finance, colonial trade, or colonial police. A very large amount of routine business is handled by these various bureaus because the French, unlike the English, have not acquired the habit of leaving details to be settled by the men who are on the ground. The tendency is to centralize everything in Paris.

Colonies
governed by
law and
governed by
decree.

There is a formal distinction in status between those French colonies which are organized by law and those which are organized by presidential decree. Only three colonies come in the first category,—Martinique, Guadeloupe, and Réunion. Their governments cannot be altered except by action of parliament. But changes in the government of the other colonies can be made at any time by a decree of the President on the advice of the colonial minister. The distinction is not of great practical importance, however, because all the colonies of both categories are governed in much the same way. No French colony has a constitution in the sense that Australia and South Africa have constitutions, that is, organic laws which can be changed by action of the colonial authorities themselves; but several of them have elaborate decrees

which virtually serve as constitutions and which are not infrequently changed.

No French colony enjoys self-government, or anything approaching it. In each the executive power is vested in the hands of a governor-general or a governor, appointed from Paris. Like the prefect of a department in France, he has a dual position, for he is at once the agent of the home authorities and the head of the local administration. He is assisted by a secretary-general (who corresponds to the secretary of a prefecture) and by various directors or heads of administrative departments, all of whom are appointive officials. In each colony there is also a governor's council with advisory powers. Its composition varies in different dependencies, but it customarily includes some colonial officials together with other persons designated by the governor. The governor must ask its advice on various matters but need not follow it. With the addition of certain magistrates this council also serves as the chief administrative court of the colony.

How the smaller colonies are governed.

There is also, in each colony, a deliberative council which is roughly modelled upon the general council of a French department. These deliberative councils are wholly, or almost wholly, made up of elective members. Natives are admitted to the suffrage under certain restrictions, and many of them vote; but the majority do not. In principle the deliberative council of a colony has the same functions as the general council of a department, but they are, in fact, somewhat more extensive. The council votes the budget in each colony but the governor may make provision for necessary expenditures if the council does not do so.

The deliberative councils.

The work of routine administration in the various French colonies, protectorates, and mandated countries, makes it necessary to send out a large number of officials. Originally these administrative officials were selected without any test of fitness and owed their appointment to personal or political influence. Then, for a time, the French tried the experiment of recruiting them from the civil service at home; but this also was found unsatisfactory. Finally, it was decided to establish a school or college for the special training of colonial officials, and this was done in 1888. The École Coloniale is located in Paris and is maintained by the government in the same way as a military or naval academy. Admission is by competitive examination and the course extends over two years. All students pursue the same courses during the first year and then

The training of colonial officials.

specialize in one of the four sections into which the curriculum for the second year is divided. The studies include colonial history, tropical economics, native languages, native law, and colonial administration. The number of graduates is held down by the high standards to a point where it is less than the number of annual vacancies. The best graduates are appointed to minor positions in the colonial ministry or are sent at once to the colonies. This school, however, does not have a complete monopoly, for some positions are still awarded by the minister of colonies at his discretion, and some are filled by competitive examinations open to all French citizens.

France as a
colonizer.

For various reasons the French have been less successful than the English in their rôle as colonizers. This is partly due to the combination of good judgment and good fortune which enabled the English, by their control of the seas, to take the best colonies of France away from her. But it is also because the French are not a migratory race. France has had no overpopulation, no surplus with which to people her dependencies. Even in Algeria the French are outnumbered by people of other European races. The Frenchman loves his native soil, and well he may, for there is no portion of the earth's surface more blest by nature than the tract that lies between the Rhine and the Pyrenees. Give a young Frenchman the assurance of a moderate income and he will rarely leave France for the chance of making a fortune elsewhere. The fairly equal distribution of property among the French people, moreover, has deprived France of that venturesome element, the penniless younger sons, who have played so large a part in the upbuilding of Greater Britain. Finally, something is attributable to the rigid economic policy which France has applied to her dependencies. The doctrine of the open door has produced no rhapsodies in the French colonial office. The colonies have been discouraged from entering into close commercial relations with foreign countries. France has not been able to supply them with sufficient capital or initiative; on the other hand the French government has not been willing that foreign countries should do this.

The closed
door.

Unable to populate her colonies with emigrants from home it might be assumed that France would welcome an influx from other countries. But this has not been the government's attitude. All the colonies and protectorates of France are managed as though Frenchmen alone could possibly have any interest in them. The

laws, the commercial regulations, the rules relating to the exploitation of mines and forests, all favor the citizen as against the alien. The old mercantilist doctrine that colonies exist for the benefit of the mother country has been hard to submerge; it crops up at every turn.

Nevertheless France has found her colonial empire an expensive luxury. There is not one of her colonies that really pays its own way—when all the debits are reckoned in. This is not to imply, however, that France is making a failure of her imperial enterprises. Bearing in mind her troubles at home and the difficulties with which she has to contend—the lack of a surplus population, the backwardness of the people in most of her dependencies; and the relative newness of her more important colonies—the marvel is that France has done so well.

The most recent book in this field is Stephen H. Roberts, *History of French Colonial Policy, 1870-1925* (2 vols., London, 1929). Other useful volumes are A. Megglé, *Le domaine colonial de la France; ses ressources et ses besoins* (Paris, 1922); V. Beauregard, *L'empire colonial de France* (Paris, 1924); Albert Duchene, *La politique colonial de la France* (Paris, 1928); and G. Hardy, *Histoire de la colonisation française* (Paris, 1928).

The more important laws and decrees relating to the French colonies are given in A. Mérignhac, *Précis de législation et d'économie coloniale* (Paris, 1924); as well as in René Foinet, *Manuel élémentaire de législation coloniale* (Paris, 1924); and in Henri Mariol, *Abrégée de législation coloniale* (Paris, 1925). *L'annuaire colonial*, published in Paris, gives up-to-date information and statistics.

Mention may also be made of V. Picquet, *Colonisation française* (Paris, 1912); A. Sarraut, *Mise en valeur des colonies française* (Paris, 1923); and A. Girault, *Colonial Policy of France* (Oxford, 1917).

CHAPTER XXXI

THE RISE AND FALL OF THE GERMAN EMPIRE

The old political science was mistaken when it regarded the army as nothing but the servant of diplomacy, and gave it only a subordinate place in its political system. . . . If power, within and without, is the very essence of the state, then the organization of the army must be one of the first cares of the constitution. . . . It is the army which supports the state.—*Heinrich von Treitschke*.

A great collapse and its lessons.

What was generally supposed to be the strongest and most efficient government in the world went down with a crash in the first week of November, 1918. The collapse, so quick and complete, astounded everyone. The iron fist and the hoops of steel proved to be made of painted plaster. The rest of the world looked at the broken idol and wondered why a government could have been so weak when it seemed so strong. What is the explanation? How did the pre-war German government manage for so many years to present the externals of vitality while developing internal deterioration? The answer involves some knowledge of the circumstances under which the empire came into being and of the governmental mechanism which it used. "To understand any problem," Grover Cleveland once said, "I have to know how it came to be a problem." There are few great questions of comparative politics which can be understood without some knowledge of their historical background.

Origins:
The Holy
Roman Empire.

The great mediæval institution of feudalism developed not only in France but in the regions north of the Rhine. It pulverized these territories into hundreds of small principalities, duchies, margraves, bishoprics, fiefs, and free cities,—all enjoying a large degree of independence although most of them were nominally included within the Holy Roman Empire. This wraith of an empire had an emperor who was chosen by a group of the leading civil and ecclesiastical princes, and the whole territory owed him a shadowy allegiance; but he had no plenary or coercive powers.

Everyone has heard, of course, the wisecrack of Voltaire that it was neither holy, nor Roman, nor an empire. It was not holy because its head was a civilian; it was not Roman but largely German;

and it was not an empire because it possessed no imperial unity. Founded on the accession of Otto the Great in 962 A. D. it wormed its way through all manner of tribulations down to the early days of the nineteenth century, but never managed to realize its ideal of welding all the states of Central Europe under a unified sway. Its long history is full of interest and brilliancy, of great personages and striking situations, but not of solid achievements.

Among the various principalities which made up this nebulous confederation was the "mark" or principality of Brandenburg, ruled by the House of Hohenzollern. It was a small tract without any great advantages in the way of natural resources, and without access to the sea. During the later middle ages, however, the principality began to grow both in size and in strength; its name was changed to Prussia, and its rulers began to call themselves electors of Prussia. Then came the Thirty Years War, in the course of which new territories were acquired, and Prussia became the second largest among the numerous German states. In 1701 its reigning elector took the title of king, and one of his successors, Frederick the Great, made some large additions to the kingdom, notably by seizing the province of Silesia from Austria. During Frederick's reign (1740-1786) the population of Prussia was doubled and the kingdom became one of the great military powers of Europe.

Brandenburg and Prussia.

Frederick the Great.

After the death of this strong monarch, however, Prussia went stagnant. The army deteriorated and the government became corrupt. Accordingly, when Napoleon undertook to conquer the country in 1806, he found the task a relatively easy one. After his decisive victory at Jena he marched through Berlin to the Russian frontier and in the peace of Tilsit dictated his own terms. Napoleon abolished the Holy Roman Empire—what was left of it. He took away from Prussia nearly half her territory; he also extinguished many of the small German principalities, and combined the rest into a political entity known as the Confederation of the Rhine.

The conquest of Prussia by Napoleon.

Although the Napoleonic conquest and the subsequent territorial reorganizations seemed to the Prussians a series of great catastrophes they were in reality the prelude to a new and better era. They roused the country from its doldrums and forced a reconstruction of its government. Napoleon's hard terms impelled Prussia to modernize her economic system and put her army on a new basis. True, the government of Prussia remained an absolutism, without an elective parliament; nevertheless great adminis-

A blessing in disguise.

trative reforms were accomplished. A large measure of self-government was given to the towns and rural districts. Napoleon insisted that the Prussian army should not exceed a prescribed minimum, whereupon the government set out to circumvent this restriction by a system of universal military training. Here were sown the seeds of that far-reaching militarism which enabled Prussia to throw off the Napoleonic yoke, to create a unified German empire, and ultimately to challenge the world in arms.

The genesis
of nation-
alism.

Most important of all, the iron hand of the Corsican impressed upon all the German states a consciousness of their common interest. The real beginning of the movement for German unity dates from the humiliations of Jena and Tilsit. By extinguishing a large number of small states Napoleon cleared the ground for a new structure. He showed the people how to organize. For this reason, paradoxical as it may sound, Napoleon Bonaparte deserves a place among the makers of modern Germany. He forced Prussia to transform herself from a mediæval to a modern state. And Prussia repaid him, when the opportunity came, by throwing her new army into the field against him at Waterloo.

Germany
after 1815.

Being among the victorious allies, Prussia obtained some important territorial acquisitions at the Congress of Vienna in 1815. This congress also arranged that Austria, Prussia, and thirty-seven smaller states (Bavaria, Baden, Hesse, Saxony, and the rest) should be joined together into a German federation or league of sovereign states. The governing organ of this federation was a Bundestag or Diet, made up of delegates from the various constituent states under the presidency of Austria. It somewhat resembled the Congress of the Confederation which existed in America during the years prior to the framing of the national constitution. Like the latter it was empowered to declare war and make peace, to maintain an army and even to enact laws, but it had no power to tax and no power to borrow. It could exert no authority upon individual citizens, moreover, and had to act through the component kingdoms or principalities. Its procedure was even more complicated than that of the Congress at Philadelphia because the various states of the confederation were unequal in voting power.

The Ger-
man Con-
federation
(1815-1867).

The German Confederation of 1815 proved a fizzle from the outset. This was largely because the delegates in the Diet ranged themselves into two factions, one led by Austria and the other by

Prussia. The two were evenly balanced, hence the proceedings were regularly deadlocked by their intense rivalry. Neither was strong enough to act, but each was strong enough to block the other. So the Diet could accomplish almost nothing, and the confederation became the butt of ridicule everywhere. "*O Bund, Du Hund, Du bist nicht gesund!*" was a jingle which indicated the popular attitude toward it. Nevertheless the Diet kept on meeting, wrangling, intriguing, doing very little to justify its existence, but hoping that some exit from its position of impotence might ultimately be found.

Why it accomplished so little.

Meanwhile a movement for changing the government of Prussia from an absolute to a constitutional monarchy was making headway in that kingdom. Prussia had no constitution and no parliament during this period. The king ruled his people with the aid of an appointive council. Several attempts were made to induce a liberalization of the government during the first half of the nineteenth century but nothing materialized until 1848 when the overthrow of the monarchy of France sent its echoes into Germany. Then the German liberals, inspired by the success of the French republicans, managed to procure the calling of a pan-German Congress, with members elected by manhood suffrage from all the states of the confederation.

The liberal movement.

This congress or convention of nearly 600 delegates met at Frankfurt-on-the-Main and proceeded to draft a new constitution, democratic in character, which would establish a unified German empire in place of the discredited confederation. The delegates had a great opportunity—as great as that which the fathers of the American Republic had utilized at Philadelphia sixty-one years before. But they were too numerous, too badly divided in opinion, too visionary, and too uncompromising in their point of view. They wasted months in pedantic debates on the rights of man and the philosophy of government. Eventually they managed to agree upon a "Constitution of the German Empire" which provided for a strong federation, with an emperor, a cabinet, and a double-chambered parliament, the lower house of which was to be chosen by manhood suffrage. The king of Prussia was to be ex-officio emperor. But the psychological moment had passed. The people had meanwhile become discouraged by the verbosity of their representatives. Their enthusiasm had waned and a reaction had set in. Austria, Prussia, and some of the other states refused to

Its abortive culmination in 1848.

ratify the plan; the king of Prussia declined to serve as emperor, and in the end the whole movement came to nothing. The old Diet resumed its sessions and things went on as before.

One of its
by-prod-
ucts.

The fiasco of 1848, however, produced one indirect result; it alarmed the king of Prussia and inspired him to grant a constitution on his own authority. This Prussian constitution of 1850 was far from being as democratic as the liberals desired, nevertheless it did establish a Prussian parliament with the lower chamber on a semi-popular basis. The liberals had hoped for manhood suffrage, but the king would not go so far. The best that he would do was to establish a four-class system of voting which gave the heavier taxpayers control of the elections. So Prussia, by the constitution of 1850, established a system of government in which the whole people had a share, but not an equal share. This constitution, despite its illiberal suffrage provisions, remained in operation until the Revolution of 1918. Then it was abrogated, and in 1920 a new Prussian constitution was promulgated in its place.

The growth
of national-
ism.

But if liberalism failed to make much headway in Prussia during the second half of the nineteenth century, nationalism had better fortune. The nationalist aspiration, the desire for a united Germany under Prussian leadership, had been first aroused during the struggle with Napoleon. It kept growing stronger during the next fifty years; but there was one great obstacle in the way of Prussia's plans, to wit, the continued participation of Austria in German affairs. Here was a member of the confederation, a powerful member, peopled largely by Germans but not wholly so. For Austria contained large non-German elements such as Magyars, Czechs, Jugoslavs, and Poles. What the Prussian nationalists desired was a homogeneous empire, peopled by men and women of Teutonic stock, with a common language and common traditions. But in order to establish any such political entity it would first be necessary to thrust Austria out of the German confederation. And Austria, of course, would never consent to this except under armed compulsion.

The ap-
pearance of
Bismarck.

Such was the situation as it shaped itself in the early sixties. Should Prussia undertake to unify the German states at the price of a war with Austria? There was at least one Prussian statesman who had no misgivings as to the right answer. This was Count Bismarck, who became prime minister of Prussia in 1862. He bluntly told his parliament that German unity could never be

achieved by speeches and resolutions, but only by "blood and iron." Diplomacy of the *Blut-Eisen* type, however, could not hope to be successful without a large army, and the Prussian parliament would not give Bismarck the money or the men for an increased military establishment. Thereupon the prime minister induced the king to dissolve parliament and for four years he ruled Prussia without one, levying taxes, borrowing money, and using the proceeds to build up a powerful military machine. Then, when the opportune time arrived, he let the friction between the two countries develop into an open rupture and the Austro-Prussian war began in the summer of 1866.¹

It was a short war. Within six weeks the Prussians overwhelmed the Austrians at Königgrätz (Sadowa) and marched to the gates of Vienna where they dictated their terms of peace. Austria, under the circumstances, was let off rather leniently. No territory was taken from her, but she was compelled to withdraw from German politics and to agree that a new and more closely-knit federation of German states (with herself excluded) should be created to replace the old one. German unity, not territorial annexations, was what Bismarck sought at this stage. When the king of Prussia remonstrated with him that Austria had been in the wrong and ought to be punished by a deprivation of some territory, Bismarck replied: "We are not here to punish Austria; we are here to pursue German policy." But some of the smaller German states which had assisted Austria during the war were annexed without any such compunction.

The war
with Aus-
tria.

There was a general expectation that a victorious war with Austria would clear away all the obstacles to a unification of the German states, but this did not turn out to be the case. The War of 1866 aroused France to the danger which was about to be created on her northern border. It impelled Napoleon III to mobilize the French army and to announce that a union of all the German states would not be permitted. The French government, remembering

The French
intervention.

¹ The story of the quarrel which precipitated this war is somewhat complicated and need not be told in detail here. The essentials are as follows: Prussia suggested to Austria that the two join hands in compelling Denmark to give up the provinces of Schleswig-Holstein which were members of the German confederation and largely peopled by Germans. Austria agreed and the two states jointly made war on Denmark. They were successful in wresting the two provinces from the Danes; but friction then arose between themselves as to the division of the spoils. When the relations between the two countries had become badly strained by this friction Bismarck proposed the exclusion of Austria from the confederation.

that self-preservation is the first law of nature, took the ground that the establishment of an all-inclusive Teutonic nation would upset the balance of power, endanger the peace of Europe, and threaten the security of the French people. Bismarck, of course, did not think it good policy to wage two wars simultaneously, or in such quick succession, so he reluctantly agreed that four South German states (Bavaria, Baden, Hesse-Darmstadt, and Württemberg) would be left out of his new federation. It was agreed that these four states might, if they chose, form a separate federation among themselves, and thus provide a counterpoise to Bismarck's aggression; but they took no steps in this direction. On the contrary they soon entered into close military and economic relations with their North German neighbors.

Formation
of the
North Ger-
man con-
federation.

Instead of a pan-German federation, therefore, Bismarck had to content himself with a confederation of the German states north of the Main. These states numbered twenty-two in all. Prussia now found herself a giant among liliputians, being larger in area and in population than the other twenty-one states put together. A federal constitution was needed, and Bismarck provided it. He did not summon a constitutional convention to draft this document but undertook the work single-handed. It is said that he dictated the whole thing in one afternoon. Then he called a convention of delegates from the various states to discuss his draft. They accepted it and it was subsequently ratified, with a few changes, by the first Reichstag of the new federation which met in 1867. This constitution served the North German federation until 1871, when the four South German states came into the union. Then, with some alterations, it became the Constitution of the German empire and so remained until the Revolution of 1918.

The Franco-
Prussian
war.

For the moment France had been able to impose a veto upon the Prussian plans, but it was not to be expected that the nationalist aspirations of the German people could be permanently thwarted in this way. With Bismarck still in power it was inevitable that the French, like the Austrians, would soon have to give way or fight. And so it came to pass. Four years after he had finished with Austria, Bismarck saw the relations between Prussia and France approach the breaking point. A war with France was essential to the fulfilment of his program. Whether he tried to promote a clash between the two countries has been a matter of controversy; he certainly did nothing to avoid it. Perhaps it is not unfair to sug-

gest that France was the original sinner in having attempted to prevent the unification of Germany, thus denying to the German people the right to settle their own affairs, and was also at fault in making other unreasonable demands on the eve of the conflict, but that Bismarck was the *agent-provocateur* who fanned the spark into flames.¹

The immediate question upon which the two countries went to war in 1870 was not of great importance; it would never have led to hostilities if the general relations between France and Prussia had been cordial. It concerned the selection of a Prussian prince for the then-vacant throne of Spain. The French declared that they would not tolerate Prussian monarchs both north and south of them. Napoleon III and his advisers insisted that the Prussian prince must decline the proffered Spanish kingship—which he did. But this withdrawal did not settle the issue, for the French government thereupon requested from Prussia an assurance that the Spanish candidacy would not be revived at some later time. Such an assurance the Prussian government declared it could not give. Meanwhile both countries worked themselves into a war fervor, and by garbling an official telegram Bismarck touched off the explosion.

Its immediate cause.

When the campaign began all the states of the North German confederation made common cause with Prussia, and so did the four South German states which had been left out of the confederation in 1867. Everything had been thoroughly prepared by Bismarck and Von Moltke, the latter being head of the military organization. The French, as the outcome soon showed, were no match for their opponents in organization, in leadership, or in readiness. The war was short and decisive; within two months France had been overwhelmed, her largest army forced to capitulate, her emperor taken prisoner, and Paris besieged. While the German forces were still beleaguering the French capital Bismarck hastened to finish his program. The North German confederation was enlarged by taking in the four southern states and its name was now changed to the German empire. The proclamation of the new empire was made at Versailles on January 18, 1871.

Its outcome.

This change of name did not require the making of a new con-

¹ Those who are interested in this subject will find a very readable discussion of it, with all the supporting documents, in Robert H. Lord's volume on *The Origins of the War of 1870* (Cambridge, 1924).

The confederation becomes an empire.

stitution. The king of Prussia, who had been president of the confederation, merely assumed the title German Emperor. The parliament of the confederation, with its two chambers (Bundesrat and Reichstag), became the parliament of the empire. The relations between the empire and the states were somewhat clarified by a few verbal changes in the constitution of 1867, and some special concessions were granted to the newly-admitted states, especially to Bavaria. Otherwise the constitution of 1867 was retained intact.

Why the old imperial government should be studied.

Now although this imperial constitution went into the discard during the early days of November, 1918, with none to do it reverence, the student of comparative government cannot lightly dismiss it from his mind. For the study of government does not confine itself to successful ventures alone. Great failures in the political field also carry their lessons—or ought to do so—and the German imperial government during the years 1871–1918 represents one of the great political failures of modern times. The collapse of the Czarist régime in Russia was no surprise to anyone who knew that country. Nor was the break-up of the old government in Austria-Hungary, for it was never regarded, either at home or abroad, as anything more than a clumsy makeshift.

Its high reputation before 1914.

But the government of the German empire had come to be looked upon as one of the highly stabilized governments of the world. The majority of the German people were convinced that it had no peer among the governments of other countries. It is true, of course, that considerable elements among the people, the Social Democrats especially, desired to have some of its features liberalized; but only a small group of extremists went so far as to demand the entire abolition of the imperial system. Nor was this admiration confined to Germany. The old German government was highly praised by political scientists in other countries. Judged by its results there seemed to be good reason for its prestige. The German empire, during the forty years following its creation, kept steadily growing in population, wealth, influence, and outward strength.

The revulsion in attitude during the years 1914–1918.

Then, in 1914, came the outbreak of the world war and with it a complete revulsion of attitude in the allied and neutral countries. The whole fabric of German government was denounced as despotic, militaristic, a menace to the cause of democracy and to the well-being of the world. Even among the German people an attitude of hostility began to develop as the war dragged on, and when

the hope of victory disappeared they tore their constitution into shreds. Thus, in the end, the imperial government found itself condemned by public opinion in all the allied countries, in most neutral countries, and even in Germany itself. It went to its demise in a cloudburst of vituperation.

To the student of political institutions this collapse is more instructive than was the overthrow of the old Bourbon monarchy in France, or the breakdown of the Romanoff empire in Russia. In both these instances the government had existed without the confidence of the people, supporting itself by military force and repression. But the German imperial government, prior to 1914, was not based on coercion. It embodied the forms of popular rule; it accorded manhood suffrage; it accepted the principle that no taxes should be levied without the consent of the people given through their representatives.

The imperial constitution, indeed, had some notable merits. It was a concise, clear, and practical document—the work of a man who knew exactly what he wanted and did not waste words in saying it. It established a strong executive. It centralized the responsibility for administration. It was relatively easy to amend. Bismarck, who framed the document, believed that this facility for amendment would give the imperial constitution the capacity to grow and develop like the constitution of Great Britain. It did grow and develop to some extent—but in the wrong direction. The government which it established became steadily more centralized and less democratic. Its unresponsive character became more and more pronounced.

The German empire which collapsed in 1918 was a federalism made up of twenty-five kingdoms, grand duchies, duchies, principalities, and free cities.¹ Of these Prussia was by far the largest both in area and in population, being larger than the other twenty-four states of the empire put together. The German empire was not, therefore, a federation of equals. To use a well-known metaphor it was a compact between “a lion, a half-dozen foxes, and a score of mice.” In the American union some states are larger in

¹ There were four kingdoms—Prussia, Bavaria, Saxony, and Württemberg; six grand duchies—Baden, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Saxe-Weimar, and Oldenburg; five duchies—Brunswick, Saxe-Meiningen, Anhalt, Saxe-Coburg, and Saxe-Altenburg; seven principalities—Waldeck, Lippe, Schwarzburg-Rodolstadt, Schwarzburg-Sonderhausen, Reuss (elder line), Reuss (younger line), Schaumburg-Lippe; and three free cities—Hamburg, Lübeck, and Bremen. In addition there was the “imperial territory” of Alsace-Lorraine.

Some outstanding features of the imperial constitution.

Its notable merits.

Character of the old empire.

area and more populous than others. Texas has a hundred times the area of Rhode Island; New York has a hundred times the population of Nevada. But no state is so great as to dwarf all the rest. To concentrate half the population of this country it would be necessary to combine eight or ten states. But imagine an American union in which one state extended over the entire country east of the Mississippi and contained nearly sixty per cent of the total population! Obviously it would be impossible to keep this leviathan from electing one president after another, controlling a majority in the House of Representatives, and exercising a dominant influence upon all questions of national policy. Prussia, among the German states, occupied that position. As the lion of the compact she insisted on having the lion's share. Hence the German empire, although federal in form, was not federal in the American sense. Prussia governed the country with a certain amount of reluctant deference to the wishes of the other states. This fact is worth emphasis because it explains a good many things that would otherwise be inexplicable.

One of its
peculiar-
ities.

In one sense the empire was actually federal, for the constitution divided the field of governmental powers between the imperial and state authorities. This it could readily afford to do because with Prussia dominating the policy of the empire, it made little difference whether a certain function was lodged in one hand or the other—whether it was made an imperial or a state function. At any rate the constitution was generous in the degree of authority which it left to the various states. The imperial authorities were given authority over such matters as foreign relations, foreign trade, the army and navy, taxation and borrowing, railroads, canals, the postal and telegraph services, currency and banking, patents and copyrights, weights and measures, the regulation of industry, censorship, and so on. In addition the entire field of criminal and civil lawmaking, and of judicial procedure, was turned over to the imperial parliament. On the other hand the actual administration of these functions was largely (though by no means entirely) devolved upon the twenty-five states.

Comparison
with the
United
States.

Here was a conspicuous difference between the German and the American way of apportioning power between the national and state governments. It deserves special mention because the difference still exists under the new republican constitution of Germany. In the United States, when Congress passes a law, the

enforcement is undertaken by the federal officers, and the interpretation of the law is entrusted to the federal courts. When, for example, Congress passed the Clayton Act in 1914, it set up a federal trade commission with authority to administer the provisions of the act. This commission has its own agents, investigators, and inspectors; and when they discover violations of the law they report the matter for prosecution in the federal courts.

But this has never been the German way of doing things. The imperial parliament enacted laws on matters within its jurisdiction, but in almost all cases it devolved the administration of these laws upon the state authorities. For this reason the central government had an astonishingly small number of officials. Members of the diplomatic and consular services were appointed by the imperial government, as were the chief officials of the postal and telegraphic services, and some other high functionaries; but most of the postmasters and postmen, customs officers, collectors of internal revenue, district attorneys, court officers, and others who figure so largely on the federal pay roll in America—these were appointed by the governments of the individual German states.

The chief official of the old empire was the kaiser. When the North German confederation was formed in 1867 it was decided to have a presidency and the king of Prussia was given this position. Then, four years later, amid the patriotic fervor which had been aroused by the victorious war with France, he ceased to be merely president of the federation and took the imperial title. By so doing he acquired, however, no additional powers. No imperial throne was set up, no imperial salary provided, no imperial palaces placed at the emperor's disposal. It was assumed that his salary, palaces, and throne as king of Prussia would suffice. As king of Prussia he was already territorial sovereign over about three-fifths of the German territory. Over the remaining two-fifths he merely continued to be the head of a federation, with relatively little authority.

This distinction between his powers as king of Prussia and his powers as German emperor was not appreciated by the world at large. Outside Germany everybody assumed that the authority of the emperor applied uniformly throughout his empire—to Prussia, Bavaria, and Saxony alike. But most of his powers were royal powers; very few of them were imperial. When he conferred on some distinguished visitor, for example, the Order of the Red

The kaiser.

His position.

Eagle, or similar decoration, the newspapers of the world announced it as the action of the German emperor. But it was in fact the action of the Prussian king. As emperor he had no decorations to bestow. The executive authority of the German empire, in fact, was exercised by the rulers of several states and free cities, among whom the king of Prussia was merely *primus inter pares* with the imperial dignity attached to him. It is impossible for anyone to understand the spirit of the old German government unless he gets this point clearly in mind.

His powers: As emperor, the king of Prussia had important executive powers in only two fields of government—national defense and foreign relations. He was commander-in-chief of the armed forces of the empire. As such he supervised the organization of the German army in time of peace and had absolute authority over it in time of war. The emperor was also commander-in-chief of the navy, with similar authority. The constitution gave him power to declare war, but provided that the consent of the Bundesrat or upper chamber of the imperial parliament should also be necessary except in the case of an attack upon the empire. In such cases he could declare war alone.

1. National defense.

2. Foreign relations.

The conduct of foreign relations was also in the emperor's hands. He appointed the German ambassadors to other countries, gave them their instructions, received ambassadors from abroad, and exercised a general supervision over all diplomatic negotiations. In this field he possessed the same powers that belong to the President of the United States. But he had a further power which the President does not possess—namely, that of "entering into alliances and treaties with foreign states." This he had the right to do without consulting either branch of the German parliament unless the treaty happened to require parliamentary legislation for carrying its provisions into effect. If, for example, the treaty pledged a reduction of the German tariff, or the payment of a sum of money, or the cession of German territory, the emperor could not carry out these pledges without the coöperation of the German parliament.

Blunders in these two fields.

It was in these two fields of government, national defense, and foreign relations, that the emperor found scope for the exercise of his personal influence. His authority here was direct and decisive. Bismarck, when he wrote those provisions in the constitution, was thinking of his old master, William I. He felt sure that this

monarch would move cautiously in all matters pertaining to war and diplomacy. But Bismarck's old master could not live and reign forever. He died in 1888 and the imperial authority soon passed to his grandson, a monarch of different stripe, devoid of the old emperor's circumspection. And William II undertook to exercise a personal supervision over military and diplomatic matters although he lacked the qualities that were essential to success in either field. The collapse of the imperial power in 1918 was fundamentally due to a long succession of blunders made by William II in military, naval, and diplomatic policy—the domains of government in which the constitution vested him with full power.

As respects ordinary executive powers, on the other hand, the emperor was not well endowed by the old constitution. He was authorized to convene both chambers of the imperial parliament and to dissolve the lower house with the consent of the upper chamber. He was given the duty of promulgating all laws passed by parliament; but he had no veto power, either absolute or qualified. When a bill passed the two chambers it became a law. But as king of Prussia he had what was in fact a veto, for he controlled more than a third of the members in the upper house and could usually secure enough additional votes to defeat any measure which he did not favor. As for amendments to the constitution (which required more than a majority vote) his control of the large Prussian delegation in the upper house gave him an absolute veto.

During the years 1871–1918 Germany had three emperors. William I, who had been king of Prussia since 1860, was proclaimed at Versailles in 1871. In as much as William was born in 1797 he was seventy-four years old when he became emperor; nevertheless he held the throne until 1888.¹ The old emperor was a soldier by temperament and training without much grasp of statecraft, yet he had the most useful quality that any ruler of men can possess—that is, the ability to choose and keep advisers more capable than himself.

On his death in 1888 the Prussian throne (and with it the imperial title) passed to his eldest son, Frederick. But Frederick was seriously ill at the time of his accession and died within a few months. Thereupon Germany went under the leadership of her

3. Other powers.

The three emperors: William I (1871–1888).

Frederick (1888).

¹ He had the remarkable experience of entering Paris in 1815 after the overthrow of Napoleon I at Waterloo, and again entering the city at the head of his troops in 1871 after the collapse of Napoleon III.

William II
(1888-1918).

third kaiser, who took the title of William II. In addition to being young, the new emperor was known to be impulsive, ambitious, and self-confident. For the moment he retained Bismarck as his chancellor but the two soon became estranged and parted company. Thereafter the emperor virtually served as his own chancellor although various statesmen were permitted to bear the title. From 1890 to the outbreak of the world war he made himself a dominating influence in all branches of imperial policy. He took a keen personal interest in the army, in the upbuilding of a navy, and in the conduct of foreign relations. In point of mental capacity he was not inferior to his grandfather, but he lacked the old emperor's shrewdness. His political views were reactionary; he openly avowed himself a monarch by divine right. In the field of diplomacy and international relations his ineptitude was phenomenal, and it appeared to become more so as he grew older. When he came to the throne, William II was an enigma, and he remained a good deal of a puzzle, even to his own people, during the thirty years of his reign.

The office
of chan-
cellor.

The imperial constitution of 1871-1918 made no provision for a cabinet. Bismarck argued that the structure of the German imperial government did not lend itself to a ministerial system such as existed in England, but the fact was that he desired to be the emperor's sole adviser. What he wanted was a one-man cabinet. He was ready to have subordinates but not colleagues. So he provided in the constitution that there should be a chancellor, appointed by the emperor to countersign the imperial orders and thereby become responsible for them. Responsible to whom? Not to the German parliament, but to the emperor alone.

Its powers.

Here was a curious arrangement, with nothing akin to it in any other country. The explanation is that Bismarck, in drafting the constitution, created the sort of office that he himself desired to occupy. He made it the pivotal point in imperial administration, for he stipulated that the chancellor should preside in the Bundesrat and should also be entitled to participate in the debates of the Reichstag. He also made it possible to combine the chancellorship with the office of Prussian prime minister, for he intended to occupy both positions. And so long as he was in power he clung to both. For nineteen years, from 1871 to 1890, he was the real ruler of the German empire with greater powers than pertained to a premier in any other country. Around him he gathered a group of high officials who were called ministers but who were merely the

chancellor's subordinates. Their tenure depended on his beck and nod. They were in office to do his bidding. Students of government ought to know something about this remarkable man, commonly acclaimed as the greatest German since the days of Luther, who rose in ten years from relative obscurity to be the idol of forty million people.

Otto von Bismarck was born in 1815, the son of a Prussian landowner. He received a good education and entered political life while still a young man. In the Prussian Landtag, or legislature, he attracted attention by his vigorous support of the crown. In due course he was appointed a member of the old federal Diet which, it will be remembered, was trying to reconcile the interests of the federated German states, Austria included. Growing tired of the wranglings in this body he secured a place in the diplomatic service and finally became Prussian minister to France. He was occupying this post when William I summoned him from Paris in 1862, and appointed him prime minister of Prussia.

Bismarck,
the first
chancellor.

Early life.

Becomes
prime min-
ister of
Prussia.

His policy.

Bismarck assumed his new post with clear objectives in view. The gist of his political philosophy has already been stated, but it will bear repetition because its effects were so far-reaching. It made Germany an empire, France a republic, and Italy a kingdom. Briefly, the Bismarckian credo may be summed up in this way: "The German states must be welded together into a closer union under Prussia's leadership. To accomplish this, Austria must be ejected from all part in German affairs. This will mean wars, and to win wars Prussia must have an all-conquering army. If parliament will not help build up such an army, then parliament must be sacrificed. Nothing must stand in the way of German unity."

This policy he carried through without a quiver of conscience although it took three wars to do it. Within a period of seven years he dictated his own terms of peace to Denmark, Austria, and France. Meanwhile he drafted a constitution, established a new confederation, and transformed it into an empire. No ordinary man could have done these things, and Bismarck was not of common clay. In physique he was big and powerful, with strength written in every line of an iron countenance. A tireless worker, clear in his conceptions, he was daunted by no obstacle however great. He had no scruples in dealing with his opponents, and his ethical standards as applied to diplomacy left something to be desired. Hence his critics called him a Machiavellian—one to whom

the end justified the means—yet Bismarck was a devoutly religious man, a fundamentalist in his beliefs, and patriotism was part of his religion.



"DROPPING THE PILOT." From *Punch*, March 29, 1890.

A great
diplomat.

As a mover of pawns on the chessboard of European politics, Bismarck had no equal in his day. He was far-sighted, adroit, and

gave no hostages to chance. "One war at a time" was the goal of his diplomatic strategy. Germans must never get into a war on two fronts with the odds against them. So he kept his wars localized. He cajoled France while he dealt with Austria. Then he humored Austria while he squared accounts with France. All the while he cultivated the friendship of Russia and scrupulously refrained from antagonizing England. It is inconceivable that Bismarck would ever have let his country get into a conflict with half the world as it did in 1914-1918.

The iron Pomeranian ceased to be chancellor of the empire and prime minister of Prussia in 1890. William II had come to the throne two years earlier. A difference of opinion arose between the two and the chancellor submitted his resignation. This procedure had always brought the old emperor to terms, but with the impulsive and self-confident young kaiser it did not avail. Much to Bismarck's surprise and chagrin the resignation was promptly accepted. The ex-chancellor did not take his dismissal in good part but became a severe critic of his imperial sovereign, thus creating a situation that was embarrassing to all concerned. He died in 1898, but before his death a reconciliation had taken place.

His departure from office.

Bismarck was succeeded as chancellor by Caprivi, an army officer and personal friend of the emperor, who had no special qualifications for the post. This appointment meant that William II intended to be emperor, chancellor, and prime minister all in one. As it turned out, Caprivi was not able to placate the Reichstag, so he gave way in 1894 to Hohenlohe, an elderly parliamentarian who was deemed to be a better floor leader. Six years later Hohenlohe was succeeded by Bülow who continued in office until replaced by Bethmann-Hollweg. The latter was chancellor at the outbreak of the war and remained at his post till 1917 when a series of rapid changes followed. Then Germany had four chancellors in about a year—Michaelis, Hertling, Prince Max of Baden, and Ebert. The last-named took over the office during the transition to the republic.

Bismarck's successors.

Under the constitution of 1871 the German imperial parliament consisted of two chambers—an upper house, or Bundesrat, and a lower house, or Reichstag. The first was assumed to represent the states and the second the people. The Bundesrat had fifty-eight members appointed by the heads of Prussia, Bavaria, Saxony, and

The imperial parliament:
1. The Bundesrat:

the other state governments. These members were not distributed among the states equally (as in the Senate of the United States) nor were they allotted in exact ratio to population. The basis of representation was a compromise between the two. Every state had at least one member; several had two, four, or six members; Prussia had seventeen. Prussia thus controlled less than a third of the whole membership although her population would have entitled her to more than half.

The members of the Bundesrat were not appointed for fixed terms and could be recalled by their respective states at will. They voted in accordance with instructions from home, and for that reason every state-delegation in the Bundesrat always voted as a unit. Any member of the delegation could cast his state's vote; it was not essential that the other members of the delegation be present. The Bundesrat, from this point of view, was an assemblage of ambassadors rather than a body of senators.

Its composition.

Writers pointed out, many years ago, that the Bundesrat was unlike any other body in the world. It was not an international conference, being part of a constitutional system, and having a share in the making of laws. Nor was it a deliberative assembly, because the delegates voted according to instructions. Its sessions were secret. It had some executive powers. In short the Bundesrat was an assembly of sovereign states by proxy.

2. The Reichstag.

The Reichstag, on the other hand, was a body of nearly four hundred members elected from single-member constituencies on the basis of manhood suffrage. The constitution did not prescribe that a general redistricting must be made at stated intervals, and there was none during the entire history of the empire. As a consequence the districts became very unequal in population. Rural constituencies, which had declined at each census, retained their original representation, while the rapidly growing industrial towns got no additional members. There was a great shifting in the German population during the years 1871-1918 but no readjustment of representation in the Reichstag. The situation was something like that which existed in England prior to the reform of 1832 although by no means so bad. And the reason was the same in both cases. Those who had the power wanted to keep it. In Germany the rural districts usually elected Conservatives, Centrists, or Liberals, while the industrial cities chose Social Democrats. A redistricting on a basis of population would merely have increased

the Socialist strength in the Reichstag, hence the other parties joined in opposing it.

In general the two chambers had an equal part in lawmaking, but the Bundesrat became the dominating branch of the imperial parliament. Nearly all important bills originated there. The Reichstag, moreover, could be dissolved at any time by the emperor with the Bundesrat's consent, and on several occasions it was dissolved when it refused to concur with the latter on important measures of legislation. But the chief reason for the Reichstag's failure to become a powerful factor in imperial policy was the absence of any means by which it could control the executive. The chancellor was not responsible to it, nor could his subordinates be called to account by its members. The rules of the Reichstag provided for interpellations, as in France, but an adverse vote at the close of a debate was never followed by any ministerial resignations. Hence the interpellation procedure in Germany performed no service except to give members of the Reichstag an opportunity to air their grievances.

Powers of
the two
chambers.

Interpella-
tions.

There remained the power of the purse. This, it might be thought, would have enabled the Reichstag to make its authority felt, for the budget had to be voted annually and needed the Reichstag's assent. Why, then, could not the representatives of the people bring the emperor and his advisers to terms by refusing to supply the government with funds? There was a reason why this could not be done, namely, because of the constitutional doctrine that no existing governmental enterprise could be abolished or weakened by the refusal of one chamber to supply the funds necessary for its support.

The control
of appro-
priations
during the
imperial
period.

The argument on this point was not wholly without force. Every imperial institution or enterprise (such as the ministry of the interior, the war college, or the system of old age pensions, for example) had been established with the assent of both chambers. Being established in this way it ought not to be abolished or weakened except by action of both. So when the Reichstag declined to vote the necessary appropriation for any established branch of the imperial service the executive authorities nevertheless went ahead and maintained it out of whatever public funds were available. It was similarly held that the Reichstag, acting alone, could not take away from the government any existing source of revenue.

Recurrent
appropria-
tions.

A chamber
of echoes.

Having no real control over the policy of the executive, the Reichstag became a chamber of echoes. It received bills from the Bundesrat, went through the gesture of referring them to committees, debated them, amended and compromised when it could, and in the end gave its assent. When it proved obdurate on any important measure a threat of dissolution could be used to mellow its attitude. No single political party ever managed to obtain a clear majority in the Reichstag, and the chancellors were able to play off one faction against another. They knew the ambitions of each. They could concede a little here and a little there, thus gathering enough votes to get their measures through. Yet the Reichstag had all the externals of a democratic chamber. Its members were chosen by manhood suffrage and no law could be enacted without their consent. But its activities were largely negative and it failed to exemplify the principle of popular sovereignty. It was not a House of Commons or a Chamber of Deputies.

The govern-
ment of
Prussia be-
fore the
war.

The old German government, in its spirit and faults, cannot be properly understood unless one knows something about the administration of Prussia, for Prussia dominated the empire. Prussia, as has been said, is larger than all the other German states put together. Its government, before the war, rested on a constitution which had been granted by the king in 1850. This constitution provided for a prime minister and a ministry but did not make them responsible to the Prussian parliament. It established two chambers—a House of Lords, as in England, and a House of Representatives chosen by a complicated system of voting in which the voters were ranged into four classes based upon the amount of taxes paid by them. Each class elected one-fourth of the total membership. The result was to give control of the house to the larger taxpayers. The wage-earning voters elected one-fourth of the whole. Prussia thus did not have even the externals of democratic government. Its government became and remained a bureaucracy, completely dominated by officials whom the representatives of the people did not control. This Prussian philosophy of government permeated the whole imperial structure.

The mili-
tary com-
plex.

Germany, as Bismarck once said, "owed more to her armies than to her parliaments." The first chancellor gave up the helm in 1890, but his maxims of politics did not depart with him. "Ballots are yours, but bullets are mine," said the kaiser to his people after Bismarck had gone. The army and navy continued to be the first

care of the imperial authorities. The task of bringing the armed forces of the empire to the highest pitch of strength and efficiency seemed to be vastly more important than that of making ministers responsible or developing a sound political spirit among the people. War was asserted by some German philosophers to be a biological necessity, and the only way of applying the law of the survival of the fittest among nations. Germany must have "a place in the sun," it was said. Her only alternatives were *Weltmacht oder Niedergang*, so the people were assured. Her naval officers, at mess, drank toasts "to the day"—when they would meet the British fleet in battle for the supremacy of the seas. Thus the force complex dominated every phase of German life. And they that take the sword shall perish with the sword.¹ It is an old admonition, but a sound one as the world discovered anew in 1918.

Three reasons have dictated the outline of imperial government which has been given in the foregoing pages. In the first place, as has been said, the student of government should not be oblivious to the lesson that a government may be outwardly strong while it is inwardly weak. He should learn not to be deceived by the appearance of things. No matter how vigorous a government may seem to be, it is insecure unless it rests upon a consciousness of consent among its people. In the second place no one can understand the government of the German Republic, as it is being conducted to-day, without some knowledge of the old régime, and, what is more, some appreciation of the old political psychology. For it is by no means certain that the German national temper has as yet undergone a substantial change. Finally, it is quite possible that the imperial government may be restored in Germany—not as it was during the years preceding 1918 but in a somewhat liberalized form. The first republic did not endure in France, nor did the second. Even the third attempt seemed for a time doomed to failure. Germany may do better, but that will be for the historians of the next generation to record.

The old German government came to an end on November 9, 1918. But before the outbreak of the war it was becoming apparent that the autocracy had lost its hold on some elements among the people. The Social Democrats were growing bolder in their demand for various reforms,—for the establishment of ministerial responsibility, for the abolition of the four-class system in Prus-

The lessons
of the old
régime.

The rising
tide of dis-
content in
Germany
before the
war.

¹ Matthew xxvi, 52.

sian elections, and for a redistribution of seats in the Reichstag. In 1908 the emperor promised adherence to "the principle" of constitutional responsibility, but he took care not to adopt the practice of it. This was shown in 1913 when the Reichstag voted its lack of confidence in the imperial chancellor and demanded his resignation; whereupon the chancellor retorted that he held himself responsible to the emperor alone.

The internal
situation
during the
war.

Inter arma silent leges. Politics also are silenced in war time. For a time the war solidified public opinion in Germany, stilled all criticism of the government, and quieted the clamor for political reform. The Social Democrats joined with the other parties in voting huge war appropriations and in granting the government everything it asked for. The early German victories aroused nationwide enthusiasm, and in the ardor of the moment nobody gave thought to questions of suffrage, redistribution, or ministerial responsibility. The military leaders virtually dominated the course of political and diplomatic policy during the years 1914-1917. That is not surprising. The German people believed, almost to a man, that they were fighting for their national existence in a war that had been forced upon them by a great European conspiracy.

The growth
of war
weariness
and unrest.

This domination of political policy by the militarists was all very well so long as the speedy triumph of the German forces seemed to be assured. But the great conflict presently developed into a war of positions which meant that it would be a long war and possibly not a decisive one. The masses of the people were called upon to undergo deprivations and hardships owing to the food shortage. Signs of war weariness began to appear as the conflict lengthened, and the spirit of political unrest again showed itself. At first the authorities undertook to silence all such mutterings with a stern hand. Newspapers which indulged in criticism of the government were suppressed; individual agitators were either thrown into jail or drafted into the military service and sent to the front. But it gradually became apparent that these tactics would not avail, for in spite of glowing official reports and high-powered propaganda the restlessness kept increasing. Thereupon the government decided that it would be wise to quiet the clamor by promising some constitutional reforms, with the proviso, however, that they should not go into effect until after the war.

The great
events of
1917:

At this stage there intervened two events of far-reaching importance, both of them tending (although in different ways) to spread

internal unrest beyond the German government's control. The first was the Russian revolution of March, 1917, which roused new hopes among the German Social Democrats. What the Russian people had done to czarism, they believed, the German people could do to kaiserism. The war weariness of the German people had now become much more pronounced and gave the agitators a fertile soil in which to work. One Socialist member of the Reichstag grew bold enough to mount the tribune and declare that the coming of a German republic was inevitable. The debates in the House grew stormier and in the summer of 1917 the full resumption of party strife forced Bethmann-Hollweg from office.

1. The Russian revolution.

The second event of great importance, even in its relation to German internal affairs, was America's entry into the war. The German military leaders hastened to assure their people that America would count for little on the battlefield, that American troops could not be raised, trained, and transported to Europe in large numbers before the war had been won. But the real significance of America's action could not be concealed from the German people. It meant that the imperial authorities, by a series of diplomatic blunders, had brought a new and powerful antagonist into the field, thus making sure that the war would be either lost or prolonged. It also meant that American propaganda, in the interest of democratic government, with a clear and definite statement of war aims, would be used to break down the confidence of the German people in their own rulers.

2. America's entry into the war.

Still the emperor and his military advisers could not bring themselves to meet this situation with an immediate and thoroughgoing scheme of political reform. They evaded and postponed, although a majority in the Reichstag was now insistent in its demands for such action. The high command still clung to the hope that the war could be won by a supreme effort before American intervention became effective. But this hope soon vanished. Repeated "drives" in the spring of 1918 failed to crush either the British or the French armies.

The eve of the revolution.

Thereafter events moved rapidly, and for the Germans disastrously. During the early autumn the far-flung battle front developed into a rout. From Switzerland to the sea the German line gave way at all points, slowly at first, then in headlong withdrawal. Whereupon the high command lost its nerve. In haste the military leaders called upon the government to make peace, immediate

The rapid breakdown.

peace, peace at any price, and the hysterical Berlin authorities hurried a message to President Wilson asking for an armistice. Meanwhile their submission to the demands of the Social Democrats became complete. One political reform after another was hustled through with drum-fire rapidity. Electoral reform was granted, also ministerial responsibility, and a redistribution of seats in the Reichstag—all in an orgy of deathbed repentance.

Concessions
came too
late.

But the hour of concession had been too long delayed. The Social Democrats and the Independent Socialists would not now be satisfied with anything short of a full-blown republic and their demands found support among the wage-earners everywhere. One of President Wilson's notes (October 23), in answer to the request for an armistice, suggested that Germany could expect no leniency unless the old scheme of government was abandoned. This was a powerful factor in breaking down what was left of the old autocratic spirit. The old régime could not ask the people to support it at the price of a harsh peace treaty.

The great
collapse.

Then came the great débâcle. While the negotiations for an armistice were proceeding, the German high naval command decided on its own authority to send out the fleet for a general action—a "death ride," as the sailors called it. The crews of certain battleships mutinied and refused to go. The mutiny spread to other vessels and then to the shore. By November 4 the revolutionary movement had gained the upper hand in Kiel and Hamburg. Three days later Bavaria rose in revolt. Great crowds of people assembled everywhere demanding that the kaiser abdicate and that a republic be proclaimed. Presently the disorder reached Berlin and the government did not dare attempt its suppression. Meanwhile, the emperor had taken refuge at army headquarters, leaving the chancellor in control of affairs at the capital. The latter, on November 9, announced the emperor's abdication and turned his own office over to Friedrich Ebert, the leader of the Social Democrats. The kaiser thereupon fled to Holland with the crown prince at his heels, while the leaders of the military party scurried for safety to Switzerland or Sweden. During these feverish days, moreover, the various state governments were everywhere overturned. Kings, grand dukes, dukes, and princes gave up their authority, without resistance, to provisional councils. Thus Germany changed in a few days, and almost without bloodshed from a military empire to a socialist republic.

Of the many books which deal with German constitutional history the most useful for general reference are Heinrich von Treitschke's *Deutsche Geschichte im Neunzehnten Jahrhundert* (translated into English by E. and C. Paul under the title *History of Germany in the Nineteenth Century*, 7 vols., London, 1916-1920) and H. von Sybel's *Begründung des deutschen Reiches* (also translated as *The Founding of the German Empire*) (7 vols., New York, 1898). A less detailed account, covering a longer period, is given in Ernest Henderson's *Short History of Germany* (New York, 1916) and in J. Holland Rose's *Political History of Germany in the Nineteenth Century* (Manchester, 1912). Mention should also be made of W. H. Dawson's *Evolution of Modern Germany* (London, 1909) and of R. H. Fife's *German Empire between Two Wars* (London, 1916).

Good surveys of the events which preceded and accompanied the collapse of the empire are given in E. Bernstein, *Die Deutsche Revolution* (Berlin, 1921); H. G. Daniels, *The Rise of the German Republic* (London, 1927); R. H. Lutz, *The German Revolution (1918-1919)* (Stanford University, Calif., 1922) which contains a full bibliography; A. Rosenberg, *Die Entstehung der deutschen Republik* (Berlin, 1928); E. Bevan, *German Social Democracy during the War* (New York, 1919); Miles Bouton, *And the Kaiser Abdicates* (New Haven, 1921); and Hans Delbrück, *Government and the Will of the People* (New York, 1923).

The most useful short biography of Bismarck is by J. W. Headlam (New York, 1899), but the iron chancellor also published two volumes of *Reflections and Reminiscences* prior to his death. The third volume was withheld from publication until after the close of the world war. Mention should also be made of Emil Ludwig's *Bismarck* (New York, 1929).

On the structure and workings of the imperial government the best detailed account is that in Paul Laband's *Das Staatsrecht des deutschen Reiches* (4 vols., Tübingen, 1901) of which there is a translation into French but not into English. A good survey may be found in A. Lawrence Lowell's *Governments and Parties in Continental Europe* (2 vols., Boston, 1897), Vol. I, chap. v, and a briefer outline in the first chapter of Malbone W. Graham's *New Governments of Central Europe* (New York, 1924). Mention should also be made of B. E. Howard, *German Empire* (New York, 1906) and F. Krüger, *Government and Politics of the German Empire* (New York, 1915). The last-named book is strongly partisan but contains a useful bibliography. An English translation of the old constitution may be found in W. F. Dodd, *Modern Constitutions* (2 vols., Chicago, 1908). A volume by Otis H. Fisk entitled *Germany's Constitutions of 1871 and 1919* (Cincinnati, 1924) gives the texts of the old and the new constitutions.

CHAPTER XXXII

THE WEIMAR CONSTITUTION

But, oppression by your mock-superiors shaken off, the grand problem yet remains to solve: that of finding government by your real-superiors. Alas! how shall we ever learn the solution of that?—*Thomas Carlyle*.

The new provisional government.

The old German government having collapsed, it became necessary to create a provisional administration. Friedrich Ebert, on assuming direction of affairs, hastily formed a council of six members, three of them Social Democrats and three of them Independent Socialists. A proclamation announced that the German people would later be called upon to elect a constitutional convention which, in turn, would settle the future government of the country. Meanwhile the council of six commissioners, under Ebert's leadership, was to manage affairs without a constitution. It was this provisional government that authorized the signing of the armistice.

A schism in the council.

But no sooner had hostilities ended than the council of six found itself badly divided. The three Social Democrats were content with the political revolution as an accomplished fact; the three Independent Socialists regarded the work as only half completed; they wanted an economic revolution also. Meanwhile, as in Russia, the organization of workers' and soldiers' councils went on throughout Germany, and each faction in the council of six tried to get the support of these bodies. In the end the Social Democrats succeeded, and the Independents thereupon withdrew from the government. Their withdrawal was the signal for Spartacist (or communist) uprisings, but Ebert filled the vacancies in his council from the ranks of the Social Democrats and by vigorous military measures soon managed to put down these disorders.

The Weimar assembly.

In January, 1919, the promise to call a constituent assembly was fulfilled. Elections took place throughout Germany and 423 delegates (including thirty-nine women) were chosen by universal suffrage in accordance with the principles of proportional representation. In the following month they assembled at Weimar to frame a constitution for the new German Republic. The assembly met at Weimar for the sentimental reason that this city was as-

sociated with the real cultural glories of the German people, and for the practical reason that in Berlin the assembly might be subjected to communist interference.

The Weimar assembly contained representatives of all the old political parties, but the Conservatives (Nationalists) formed a very small group. The Social Democrats had the largest delegation, one hundred and sixty-five, or more than one-third of the entire membership. Next in point of strength came the Center, or Catholic party, then the Progressives, and finally the Conservatives or Nationalists. The Independent Socialists, or extreme Left, made an even poorer showing than the Conservatives. Thus the assembly was so constituted that no one party could dominate its work. It was bound to adopt a compromise constitution if it adopted a new constitution at all. To this end a coalition was formed, which included the Social Democrats, the Center, and the Progressives, now known as Democrats. This bloc controlled more than seventy-five per cent of the membership.

Its composition.

The delegates got to work quickly, and in four days had adopted a provisional scheme of government which had been prepared for it in advance. Ebert became provisional president, with Philip Scheidemann as his chancellor, and a ministry was formed representing the various parties in the majority bloc. Then the assembly enacted some provisional laws and appointed a steering committee (Verfassungsausschuss) to compile data and to make a draft of the various constitutional provisions. This committee was so constituted as to give representation to the various political elements in the assembly and to the various geographical divisions of the country. Great differences of political opinion developed among its members as the result of the discussions, and many compromises were found necessary. The constitutions of other countries were studied (including the Constitution of the United States), but relatively little help was gained from them. In due course the committee made its report and two drafts of a constitution were submitted. Ultimately the assembly was able to frame a document that satisfied the middle parties, that is, all parties except the Nationalists and the People's party at one extreme and the Independent Socialists at the other. After much trimming and touching-up, this constitution was adopted by the convention on July 31, 1919, and went into force eleven days later. It was not submitted to the German people for ratification.

Its methods of work.

General significance of the new constitution.

The Weimar constitution is a document of great interest and significance. It provides an organic law for sixty million people. That, of itself, entitles the document to some attention. It was framed, moreover, with great care and after prolonged deliberation by a body of men and women most of whom were sincerely anxious to give their country a fresh start on a genuinely democratic basis.¹ Finally, the Weimar constitution is a composite. It combines old and new political philosophies. It endows old institutions with new vigor. The leaders of the assembly put new wine in old bottles. They retained from the old imperial constitution most of its nomenclature and much of its mechanism. But they also injected into the new document a homeopathic dose of the new democracy.

Its size and scope.

The constitution of the German Reich is one of the longest documents of its sort, containing more than ten times as many words as the constitution of the United States.² It consists of a preamble and two comprehensive articles, which are divided into sections, and these again into clauses, the latter numbered serially throughout the document. The prolixity of the constitution is due to the large mass of detail which the Weimar assembly thought desirable to incorporate in it,—detailed provisions relating to economic and social matters and to the rights of the citizen. The convention's method of making compromises was to give way on details whenever any of the middle parties insisted. Many concessions on minor points were made in order to secure a fairly general agreement on the constitution as a whole, and nearly every such concession meant an additional clause.

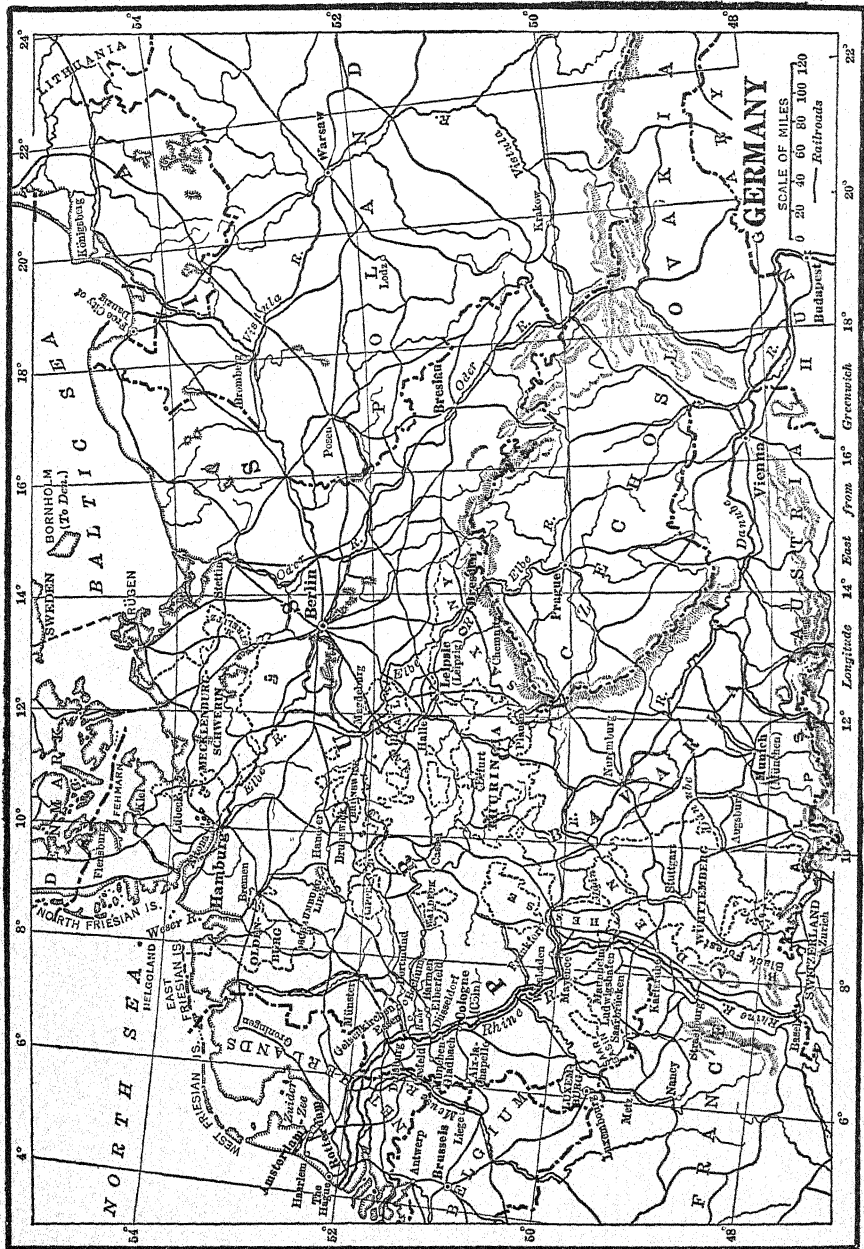
The proposed dismemberment of Prussia.

Does the new German constitution provide for a federal government like that of the United States, or for a unitary government like that of France, or for something between the two? Germany

¹ An intense public interest was manifested by the German people in the assembly's proceedings. The newspapers were filled with the discussions, while a flood of pamphlets and books proposing all sorts of constitutional schemes was let loose upon the land. The whole country was given a six month's course in comparative government.

The convention which framed the constitution of the United States in 1787 began its work in May and finished in September; the Weimar convention began on February 6, 1919, and ended its work of constitution-making on July 31. The one occupied four months, the other nearly six. But the Weimar assembly took a recess of about two months while the peace negotiations were going on, during which time the committees did some work although the assembly was not sitting. When the Weimar assembly finished its constitution it did not, like its Philadelphia prototype, eat a farewell dinner and dissolve. It remained in existence until a newly-elected Reichstag could be installed.

² An English translation may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), pp. 167-212.



before 1918 was called a federal empire, yet it lacked the first essential of a true federalism, namely, the legal equality of the states comprising it. One state, being larger than all the others, had various special privileges. The framers of the new constitution were desirous of creating a true federalism; but how could this be done without tearing massive Prussia into pieces? At the outset the convention seriously considered a proposal to divide Prussia into seven or eight states. But the idea of partitioning the ancient kingdom was quickly submerged by the tide of opposition which surged into Weimar from all quarters. So Prussia was left untouched, a giantess who must inevitably dominate the new German Reich as she did the old, although hardly to the same degree in as much as her special privileges have been abolished and her representation in the new Reichsrat will not be solid, as it was in the old Bundesrat.

Although the new government is federal in form it is rather doubtfully so in fact. Under the old constitution the center of political gravity rested with the states.¹ If the central authorities seemed to be very powerful, this was only because people did not make much distinction between the imperial government headed by a kaiser and the Prussian government headed by a king,—for kaiser and king were the same individual. Or, as the irreverent were in the habit of saying, "The kaiser must be careful how he meddles with the king of Prussia or he will find himself boxing his own ears." The old imperial government, as such, was not inherently strong; it did not have the strength of the federal government in America.

Relation of
the states to
the Reich.

But in the new German constitution the balance of power has been shifted to the central government. Most of the powers which the individual states were free to exercise before 1918 have been taken away or greatly curtailed. The German state governments,

Where the
balance of
power rests.

¹ The old empire was made up of twenty-five states (including three free cities), together with the imperial territory of Alsace-Lorraine. These two provinces were lost to France as a result of the war. In 1919 the two small states known as Reuss (older line) and Reuss (younger line) united into the "People's State of Reuss." A year later seven states, namely, Reuss, Saxe-Weimar-Eisenach, Saxe-Altenburg, Schwarzburg-Rudolstadt, Schwarzburg-Sonderhausen, Saxe-Meiningen, and Saxe-Gotha were consolidated into the republic of Thuringia. A portion of the last-named state (Coburg) was joined with Bavaria. So there are now only fifteen states (Länder) in the Reich, namely, Prussia, Bavaria, Saxony, Württemberg, Baden, Brunswick, Oldenburg, Anhalt, Thuringia, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Lippe, Schaumburg-Lippe, Waldeck, together with the three Free Cities of Bremen, Hamburg, and Lübeck.

under the new constitution, are made subordinate to the will of the nation as a whole. They have been so completely subordinated, indeed, that some question has been raised as to whether the new Germany can rightly be called a federal republic at all.¹ Certain it is that if the central government proceeds to exercise every ounce of authority which the Weimar constitution confers upon it there will be very little left to the states.

How the new constitution can be amended.

Before attempting to explain the chief provisions of the new constitution it may be well to describe how it can be amended. In the first place amendments may be made by a two-thirds vote of at least two-thirds of the members in both chambers of the national parliament, the Reichsrat and the Reichstag. If, however, the Reichsrat refuses to agree to an amendment which the Reichstag has adopted, the amendment becomes valid in two weeks unless the dissenting chamber asks for a referendum to the people. In that case the amendment does not become operative until the voters approve it at the polls. In the second place, an amendment may be proposed by the people through the medium of an initiative petition and then adopted by them at a referendum election. But the adoption of a constitutional amendment by the people, whether on their own proposal or on the proposal of the Reichstag, requires a majority of the registered voters, not merely a majority of those who go to the polls.

Analysis of the new constitution.

Introductory provisions.

"The German Reich," declares the first clause of the constitution, "is a republic, and all political authority is derived from the people."² Every state in the Reich must also be a republic. It must maintain a responsible ministry, and must elect its legislative body by a system of universal, equal, direct, and secret suffrage according to the principles of proportional representation. Subject to these limitations each state may adopt its own constitution and determine the details of its own state government.

The apportionment of powers between the Reich and the states.

The constitution of the German Reich, like all other constitutions which purport to be federal, is a grant of authority. It gives to the national government a definite enumeration of powers.

¹ See the discussion in Johannes Mattern, *The Constitutional Jurisprudence of the German Republic* (Baltimore, 1928), pp. 341-357.

² The term *Reich* was continued out of deference to popular sentiment. It does not necessarily mean "empire" although it has ordinarily been so translated. In a republican constitution the term means "nation" or "commonwealth." The framers of the Weimar constitution believed the retention of *Reich* to be entirely compatible with a republican form of government. And why not? The Germans use the word *Frankreich* to designate the French Republic.

Whatever authority it does not give, expressly or by implication, remains with the states. But in one important respect it departs from the established practice in other federations. In the constitution of the United States, for example, there is a single list of powers granted to the national government and all such powers are on the same footing. The new German constitution, in contrast to this procedure, conveys jurisdiction to the national government under several different heads, the extent of the authority varying somewhat in each case. In certain matters the Reich is given *exclusive* jurisdiction; in other matters it is given jurisdiction not necessarily exclusive. That is to say, so long and in so far as the Reich does not assume jurisdiction over such matters, the control remains with the states.

Then, with respect to some other things, the Reich is authorized to assume jurisdiction under certain circumstances, for example, whenever it becomes "necessary to establish uniform regulations." Again, the government of the Reich is given the right to "prescribe fundamental principles" which the states must observe in dealing with a variety of matters. In such cases the details are left to be determined by each state for itself. Finally, as regards the important subject of taxation the constitution places virtually no limits upon the authority of the national government. The only restriction is a purely sentimental one, namely, that in using any source of revenue which formerly belonged to the states the national government must "have consideration" for their financial requirements. But what degree of consideration, the constitution does not prescribe. It lays no restriction as to what may be taxed, or upon the rates of taxation, or the methods. So the government of the Reich has a virtually unfettered power to tax, which is the most far-reaching power that any government can have.¹

Thus the exclusive jurisdiction of the Reich comprises foreign relations, colonial affairs, citizenship and domicile, emigration and immigration, the extradition of offenders, national defense, coinage, tariffs, post office, telegraphs and telephones. Its non-exclusive jurisdiction, on the other hand, covers a much wider

Types of
jurisdiction.

The Reich's
exclusive
jurisdiction.

¹ The power-granting provisions of the constitution are as follows:

Article 6

The Reich has exclusive jurisdiction over foreign relations; colonial affairs, citizenship, freedom of travel and residence, immigration and emigration, and extradition; organization for national defense; coinage; customs, including the consolidation of

range and extends to twenty subjects in all. Its power to assume control in the interests of uniformity extends to the far-spreading subjects of social welfare and public safety—what Americans commonly call “the police power.” Its right to prescribe funda-

customs and trade districts and the free interchange of goods; posts and telegraphs, including telephones.

Article 7

The Reich has jurisdiction over civil law; criminal law; judicial procedure, including penal administration, and official coöperation between the administrative authorities; passports and the supervision of aliens; poor relief and vagrancy; the press, associations and public meetings; problems of population; protection of maternity, infancy, childhood and adolescence; public health, veterinary practice, protection of plants from disease and pests; the rights of labor, social insurance, the protection of wage-earners and other employees, and employment bureaus; the establishment of national organizations for vocational representation; provision for war-veterans and their surviving dependents; the law of expropriation; the socialization of natural resources and business enterprises, as well as the production, fabrication, distribution, and price-fixing of economic goods for the use of the community; trade, weights and measures, the issue of paper money, banking, and stock and produce exchanges; commerce in foodstuffs and in other necessities of daily life, and in luxuries; industry and mining; insurance; ocean navigation, and deep-sea and coast fisheries; railroads, internal navigation, communication by power-driven vehicles on land, on sea, and in the air; the construction of highways in so far as pertains to general intercommunication and the national defense; theaters and cinematographs.

Article 8

The Reich also has jurisdiction over taxation and other sources of income, in so far as they may be claimed in whole or in part for its purposes. If the Reich claims any source of revenue which formerly belonged to the states, it must have consideration for the financial requirements of the states.

Article 9

Whenever it is necessary to establish uniform rules, the Reich has jurisdiction over the promotion of social welfare and the protection of public order and safety.

Article 10

The Reich may prescribe by law fundamental principles concerning: the rights and duties of religious associations; education, including higher education and libraries for scientific use; the law of officers of all public bodies; the land law, the distribution of land, settlements and homesteads, restrictions on landed property, housing, and the distribution of population; disposal of the dead.

Article 11

The Reich may prescribe by law fundamental principles concerning the validity and mode of collection of state taxes, in order to prevent: injury to the revenues or to the trade relations of the Reich; double taxation; the imposition of excessive burdens, or burdens in restraint of trade on the use of the means and agencies of

mental principles is spread over a miscellaneous group of matters, chief among which is state taxation.

From this enumeration it would seem that the constitution gives to the Reich possibilities of great strength. In point of powers which the national government *must use* it is less generous than the constitution of the United States, but in bestowing authority which the national government *may use*, it goes a great deal farther. So the strength of the Reich will depend, in a very large measure, upon the extent in which it undertakes to make use of its potential jurisdiction. Conceivably it may leave a large part of its optional authority to the states and content itself with the exercise of its exclusive powers. Or it may gradually extend the scope of its optional authority until the states are virtually reduced to the status of mere governmental divisions. Whether it will do the one or the other is something that only the future can determine. Certain it is that the makers of the new German government were not "states' rights" men. They were not, like the American nation-builders of 1787, afraid of making the national government too strong.

Mandatory and permissive powers.

Whenever a constitution apportions authority among two or more governments it can be taken for granted that controversies will arise from time to time concerning the exact bounds of this apportionment. And some regular means of settling such controversies ought to be provided in advance. The framers of the American constitution provided that the federal courts should have jurisdiction over controversies between states, and over all controversies to which the United States should be a party. The makers of the new German constitution also realized that some court would have to assume this function, so they provided (Art. 19) that "if controversies of a public nature arise between different states or between a state and the Reich, they will be determined upon complaint of one of the parties by the high court of justice, unless another judicial court of the Reich is competent."

The principle of judicial supremacy.

public communication; tax discriminations against the products of other states in favor of domestic products in interstate and local commerce; or export bounties; or in order to protect important social interests.

Article 12

So long and in so far as the Reich does not exercise its jurisdiction, such jurisdiction remains with the states. This does not apply in cases where the Reich possesses exclusive jurisdiction.

But the German constitution makes no definite provision as to the power of any court to declare a national law unconstitutional. On this point it is as silent as the American constitution.

Upheld by
the courts.

Within a few years after the Weimar constitution went into effect, however, the German supreme court (Reichsgericht) rendered a decision in which it affirmed the right of the courts to hold invalid any national law that contravened a provision of the constitution. This right to declare the unconstitutionality of a national law, it ruled, is possessed not merely by the German supreme court but by various other high courts, each of which is a final authority for its own class of cases.¹

State laws
may be
nullified.

While the constitution is silent on the question whether national laws can be declared unconstitutional it is quite articulate as respects the nullification of state laws which conflict with the constitution or with the national laws. When controversies arise as to whether a state law conflicts with a national law the issue is referred to a special high court of state (Staatsgerichtshof).²

The structure of the
German national gov-
ernment:
The President.

Let us now turn to the general framework of the German national government. The constitution of 1919 provides for an executive, a bicameral legislative body, and a supreme court. The chief executive authority is vested in a President and a national cabinet. The President is directly elected by universal suffrage for a seven-year term, with no restrictions upon his eligibility to reelection. It is rather surprising that the members of the Weimar assembly should have agreed to any such arrangement, for the great majority of them were sincerely desirous of placing the new republic on a permanent basis and the dangers to republicanism which lurk in this provision must have been obvious to them. Still it is doubtful whether much is ever gained by forbidding the reelection of an official whom the people want to keep in office. The founders of the Second French Republic tried that device and it profited them nothing.

No Vice
President.

The German constitution makes no provision for a Vice President, and if a vacancy occurs in the presidential office at any time the executive functions are to be exercised as may be determined by law until an election can be held. Then a new President is chosen for a full seven years, and not merely to fill out the unexpired term.

¹ Entscheidungen des Reichsgerichts, Zivilsachen, III, 320 (November, 1925).

² Chapter I, Section 1, Article 13.

The Weimar assembly elected Friedrich Ebert, a saddlemaker by trade, and a leader of the Social Democrats, to be President of the Reich until a regular election could be held. It was the general understanding that this election would be held within a year or two, or at any rate as soon as conditions seemed to make a campaign possible without danger of riot or disorder. Elections for the new Reichstag were held in the summer of 1920 and other Reichstag elections took place in 1924. All passed off without mishap, but the government kept delaying the choice of a new President. On one pretext or another it found reason for keeping Ebert in office, and eventually the Reichstag passed a law extending his term to June 30, 1925. Before this date was reached, however, the provisional president died, and no further postponement was possible.

Two presidential elections.

The constitution does not specify the procedure by which the President shall be elected. It merely provides that the choice shall be made by "the whole German people," leaving the details of nomination and election to be regulated by national law. This law, as it now stands, makes a double election virtually essential, for it provides that a clear majority is necessary to elect a President at the first polling. If no candidate obtains a majority a second polling is held, a fortnight later, and on this occasion a plurality is sufficient.

The method of voting for a President.

At the first regular presidential election, in March, 1925, there were eight candidates in the field, no one of whom obtained a majority. Two weeks later the field was reduced to three—Field Marshal Paul von Hindenburg, who had the support of the Nationalists and other conservative groups, former chancellor Wilhelm Marx, a leader of the Center, who had the support of the middle parties and the Socialists, and Ernst Thaelmann, candidate of the Communists. To the outside world this final election looked like a straight fight between republicanism and reaction, but there were various other issues involved, among them that frequent deflector of political currents, the issue of religion. Hindenburg obtained a plurality of about a million votes over Dr. Marx and was elected. Although believed to be a monarchist at heart, the new President took the prescribed oath "to preserve the constitution and laws of the Reich." This obligation he has fulfilled to the letter.

The election of Hindenburg (1925.)

The President of the Reich (and his ministerial advisers as well) may be removed by impeachment before a high court of state

The removal of a President by impeachment and by the recall.

(Staatsgerichtshof).¹ This is a departure from the usual plan of having impeachments heard (as in England, France, and the United States) by the upper chamber of the national legislature. The German President may also be recalled from office before the expiration of his term, and this is a novel feature in its application to the head of a national government. In some American states the governor is subject to recall by popular vote (and in one case a governor has been thus removed), but Germany is the first country to provide that the executive head of the nation may be ousted from office in this way. The German recall procedure, however, is somewhat complicated, and involves action by the Reichstag as well as by the people. First the Reichstag must propose the recall by a two-thirds majority. This automatically suspends the President from office. Then the question of removal is submitted to the voters. If a majority of them vote to recall the President he is forthwith removed from office and an election is held to choose his successor.

If the recall fails.

But if the people decline to recall the President, their action operates to reelect him for a full seven-year term, and the Reichstag which proposed the recall is automatically dissolved. This is an ingenious arrangement, yet an entirely logical one. It is intended to make a President's opponents take due thought before they place the recall machinery in motion. When the Reichstag sets out to get rid of a President it must stake its own existence on the outcome. It is not probable that the recall, in view of this balance-wheel, will be incautiously used.

Executive powers of the President.

The President of the German Reich, like the President of the French Republic, is given an imposing list of powers. But in Germany, as in France, the substance of power is emasculated by establishing the principle of ministerial responsibility. The provision in the case of Germany is that "all orders and directions of the President, including those concerning the armed forces, require for their validity the countersignature of the chancellor or of the appropriate minister." And this is followed by the stipulation that such countersignature involves the assumption of responsibility by the chancellor or minister concerned. Subject to this limitation, which is one of vital importance, the President is empowered to

¹ For this purpose a Staatsgerichtshof consists of the President of the Reichsgericht as chairman, one judge from each of three state superior administrative courts, five members of the Reichsrat and five members of the Reichstag.

execute the laws and maintain public order, to appoint and remove all civil and military officers, to conduct the foreign relations of the Reich, and to make treaties; but "war is declared and peace concluded by national law," in other words the action of the Reichstag is required in both cases.

While the ordinary executive powers of the German President are not formidable, he has certain emergency powers which enable him and the national cabinet to establish a virtual dictatorship when the occasion arises. These powers rest on Article 48 of the German constitution which reads, in part, as follows:

Emergency powers.

"If public safety and order in the Reich are materially disturbed or endangered, the President may take the necessary measures to restore them, and may do this, if need be, by using the armed forces."

On its face this provision seems intended to be used only in cases of serious disorder but neither Ebert nor Von Hindenburg has so construed it. Ebert's term was marked by a wide and frequent use of the emergency powers. In July, 1930, President von Hindenburg dissolved the Reichstag and ordered a new election as "necessary measures" under the emergency article because the Reichstag had passed a resolution of no confidence in the ministry.

This action was not widely different from that taken by President MacMahon in France on the occasion of the famous *Seize Mai*.¹ Moreover it has become well established during the past ten years that the German President, under his emergency powers and with the approval of the national cabinet, may issue decrees having the force of law, or set aside the provisions of an existing law, or even of a state constitution. The courts have upheld his authority to do these things even though they infringe the personal rights which are guaranteed in the national constitution.² All such decrees, however, must be countersigned by one of the ministers.

Laws require the presidential signature in Germany, for, as in France, no law becomes valid until the chief executive promulgates it.³ Instead of promulgating the law the President of the Reich may refer it to the people, in which case it does not become

The President's share in law-making.

¹ See above, p. 412.

² See the discussion, with citations, in F. E. Blachly and M. E. Oatman, *The Government and Administration of Germany* (Baltimore, 1928), pp. 74-96.

³ This he is required to do within one month unless one-third of the members of the Reichstag petition for delay, in which case he may defer promulgation for two months unless the measure has been declared by both the Reichstag and the Reichsrat to be urgent.

valid unless the people vote to accept it. At first glance this power to order a referendum on any law might seem to place an important weapon in the President's hands; but in reality it is not of much significance for the obvious reason that he cannot order a referendum without the countersignature of a responsible minister, and no responsible minister could countersign an appeal from a decision of the Reichstag without at once losing the confidence of the latter. If the principle of ministerial responsibility is put fully into operation, as the German constitution intends, it would seem unlikely that the Reichstag will pass any important law which the ministers do not approve. And if the ministers approve, why should one of their number countersign a decree that implies disapproval? Under abnormal circumstances, with a ministry just about to go out of office, it is conceivable that a decree calling for a referendum might be advised, but a President who accepted this advice would be acting contrary to the spirit of ministerial responsibility. So it is not improbable that the executive power to delay promulgation will become in Germany, as it has become in France, a prerogative which is rarely or never used.

Where the
real executive
authority is bound
to go.

As respects the term, powers, and responsibility of the chief executive, the framers of the German constitution borrowed nothing from the United States. As to term and responsibility, but not as to method of selection, they followed the example of France. They adopted the principle that the President, although chosen directly by the people, should be controlled by his parliamentary advisers as in the French Republic. The German chancellor, if the Weimar constitution operates according to its general intent, may some day become the real chief executive, like the prime minister in France. Yet the German President will not be wholly without discretionary power because the Reichstag is split up into so many groups, no one of which is able to command a majority. This means that the President may select as his chancellor anyone who can build up a majority bloc, and sometimes there are several leaders who can do this. To that extent he enjoys the right to pick and choose his own advisers, and the range of his choice has thus far been considerable. The logic of the political alignment in the Reichstag gives him, under ordinary conditions, a varying number of practicable alternatives.

The chan-
cellor.

This brings us to the chancellor who is the German prime minister in everything but name. The constitution provides that he

shall "determine the general course of policy and assume responsibility therefor to the Reichstag." Thus he is not merely a senior minister but the directing head of the ministry. He is appointed by the President and then proceeds to make up his slate of ministers. These ministers, with the chancellor at their head, form the national cabinet which, as a whole, and each member of it, must have at all times the support of a majority in the Reichstag. The constitution puts stress upon this point in language that leaves no room for doubt.¹ It is not required, however, that members of the ministry shall have seats in the Reichstag, and in any case they have the right to attend its sessions and to introduce bills. The ministers are given the same privilege as respects sessions of the Reichsrat or upper house.

The size of the ministry is not fixed by the constitution. It is determined by the President on the advice of the incoming chancellor. But the number of ministers is ultimately within the control of the Reichstag in as much as their salaries have to be voted by that body. At the present time the German ministry consists of ten members, including the chancellor. The chancellor, unlike the prime minister in Great Britain and in France, does not take immediate charge of any administrative department. He is the general supervisor of all interdepartmental relations. The nine departments headed by the remaining members of the ministry are as follows: foreign affairs, finance, defense, justice, home affairs, economic affairs, posts and transport, food and agriculture, and labor. In a general way the functions of these various departments are indicated by their respective titles.

The ministry.

As in all other countries with parliamentary government, the members of the German ministry have both individual and collective functions. As individual ministers they are responsible for the management of their respective departments. As a body of ministers they are expected to plan the general policy of the government and to prepare the drafts of important measures for consideration by the lawmaking bodies. These two sets of functions logically go together, for it is the administrators who best know what laws are needed and it is they who can most readily provide the leadership in legislation. A failure to recognize this fact is the

Functions of the ministers.

¹ "The chancellor and the ministers require for the administration of their offices the confidence of the Reichstag. Each of them must resign if the Reichstag, by formal resolution, withdraws its confidence." Article 54.

fundamental weakness in the doctrine of separation of legislative and executive powers. The framers of the German constitution did not adopt this doctrine. They did not set up a system of checks and balances. They provided for executive leadership in legislation by giving the ministers the right to sit, speak, and introduce bills in both chambers. The constitution expressly authorized the ministry to prepare measures and to lay them before the national parliament.

Their ordinance power.

The German cabinet is also expressly given, by the terms of the constitution, the power to issue ordinances for the execution of the national laws in so far as the laws do not otherwise provide.¹ These ordinances are of various kinds. First, there are legal ordinances having the force of law and applying to the public at large. They may be issued by the ministers only when authorized by statute and under the conditions thus prescribed. But at times the authorization is given in a broad and comprehensive form. The constitutionality of these ordinances is subject to review by the courts and a cabinet ordinance can of course be repealed at any time by a national law. Second are the administrative ordinances which apply only to persons connected with some branch or department of the government service. They are issued without special authorization. Finally, there are emergency ordinances and decrees as authorized by Article 48 of the constitution when the public safety or order is materially disturbed. A very substantial portion of the rules under which the German people are governed have been prescribed by ordinances, not by laws—thus fulfilling the scriptural injunction: "And thou shalt teach them ordinances and laws, and shew them the ways in which they must walk and the things that they must do."²

The national parliament:

The German parliament consist of two chambers, the Reichsrat and the Reichstag. In the Weimar constitutional convention there was considerable sentiment in favor of a single chamber, for everyone remembered how the old federal council or Bundesrat had persistently balked the lower House in the years before the war. It had been a citadel of autocracy. On the other hand the delegates could not ignore the time-honored federal tradition in Germany or overlook the fact that every other great government had a two-chamber parliament. So, in the end they decided to re-

¹ Article 77.

² Exodus xviii, 2.

tain the bicameral system with the understanding that the upper House would occupy a distinctly subordinate place in the frame of government. So the new constitution preserves the old federal council, considerably altered in organization, greatly reduced in authority, and with a new name.

The Reichsrat is made up of ministerial delegates from all the German states and free cities. Each state sends one or more members of its own state-ministry to represent it. It may send as many ministers to the Reichsrat as it has votes in this body, and the votes are allotted in proportion to population—one vote for every seven hundred thousand inhabitants.¹ But there are two departures from this rule of representation according to numbers. In the first place it is provided that every state, however small its population, must have at least one delegate in the Reichsrat. In the second place it is stipulated that no state, however large, shall have more than two-fifths of the entire membership. The latter restriction is frankly intended to prevent Prussia, which contains four-sevenths of the entire German population, from acquiring control of a majority in the upper House.

Nor is this the only handicap that is laid upon the leviathan among the German states. Experience in the old Bundesrat had shown that a solid delegation from Prussia, even though it constituted a minority, could acquire control by playing the smaller states against one another. So precautions were now taken to ensure that the Prussian delegation in the Reichstag should not be solid. This was done by providing in the new constitution that only half the quota of votes assigned to Prussia shall be controlled by the Prussian ministry, the other half being distributed among the provincial governments of Prussia.

The outstanding features in the organization of the Reichsrat are, therefore, first, the representation of the states according to their respective populations, but with a limit upon the quota assigned to Prussia, and, second, the ex-officio membership, each state (or Prussian province) being represented by officials who already hold ministerial or administrative positions.

In the old Bundesrat there were three procedural features which gave rise to much criticism. Its sessions were secret; all votes were

1. The Reichsrat.

Its composition.

The Prussian delegation.

¹ The present Reichsrat has sixty-eight members, of whom twenty-seven are from Prussia, eleven from Bavaria, and seven from Saxony. The other states have from one to four members each.

Outstand-
ing features
of the
Reichsrat.

taken by states (not by individual members); and certain favored states were entitled to the chairmanships of various important committees. In the new Reichsrat all these objections have been removed. Its meetings are ordinarily open to the public; the voting is by individual members as in the United States Senate; and no state possesses any special privileges in the organization of committees. On the contrary it is provided that no state shall have more than one vote in any Reichsrat committee.

Its share in
law mak-
ing.

In most countries having a parliamentary system the second chamber is merely a revising body. It does not originate much legislation but gets measures after they have passed the popular branch. Its function is to criticize, to suggest amendments, and to make sure that nothing goes through too hastily. This, indeed, is the common argument for a second chamber—that it is a second line of defense against precipitate action. But the German Reichsrat is intended to function, in the main, as a preliminary rather than as a revising chamber. Measures prepared by the ministry go first to the Reichsrat. It may approve them or refuse its approval. If it declines to approve a measure the ministry may nevertheless submit it to the Reichstag accompanied by a statement of the Reichsrat's attitude. Likewise the Reichsrat may itself prepare any measure and submit it to the ministry which must thereupon lay the bill before the Reichstag accompanied by its own approval or disapproval.

Does not
enact laws.

But although the Reichsrat is given this power to initiate legislation, the framers of the constitution did not intend that it should have equal authority with the Reichstag in the *enacting* of laws. "National laws," the constitution declares, "*are enacted by the Reichstag.*" They do not require, as in the United States, the concurrence of both chambers. When a measure has passed the Reichstag it does not go to the other chamber for its assent; ordinarily it goes directly to the President and takes effect fourteen days after being promulgated by him. Meanwhile, however, the Reichsrat may file objections with the ministry, whereupon the law must be returned to the Reichstag for reconsideration.

How its ob-
jections can
be over-
ridden.

Then, if an agreement between the two chambers is not reached, the President may further withhold promulgation and submit the question to the people for their decision at an election. If he decides not to take this action the measure fails to become a law, but the Reichstag by a two-thirds majority can then vote to override

the objections of the Reichsrat, in which case the President must either promulgate the law at once or submit it to the people for their decision. Thus the Reichsrat has a suspensive veto which can be overcome either by a two-thirds majority of the Reichstag, with the President assenting, or by the people in any case.¹ But the President's personal opinions will not, in any event, be influential in the matter for he must act on the advice of his ministers who, being responsible to the Reichstag, will naturally side with that chamber in all controversies. The Reichsrat is given no special prerogatives such as the trial of impeachments, the confirmation of appointments, or the ratification of treaties. It is not a second chamber in the full sense, yet its influence upon legislation is considerable.

The Reichstag was not the dominating branch of the German imperial parliament prior to 1918, but the new constitution endeavors to make it so for the future. It is composed of members elected for a four-year term. The constitution requires that the suffrage shall be "direct, equal, secret, and universal"—which means that there can be no indirect elections, no plural voting, no oral voting, no exclusion of women. Members of the Reichstag do not represent single-member constituencies as in the English House of Commons and the American House of Representatives. A system of proportional representation, commonly known as the Baden system, was established by law in 1920, and is used in determining the elections. The details of this system are somewhat complicated, but its general outlines may perhaps be made clear without taking too much space.

First of all, the whole of Germany is divided into thirty-five districts, each of which elects a member of the Reichstag for every 60,000 votes cast within the district at the election. Thus the size of the House is not fixed in advance of the election nor is a definite

2. The Reichstag.

How members are elected.

¹ The alternatives are somewhat confusing to an outsider but they may be made clear in this way:

When the Reichstag has passed a measure by a majority vote and the Reichsrat has filed objections to it, the measure goes back to the Reichstag, and the latter may:

- (a) recognize the objections and amend the bill to meet them, in which case it becomes a law on promulgation.
- (b) disapprove the Reichsrat's objections by less than a two-thirds vote, in which case the President may refer the issue to the people, or if he fails to do so, it does not go into effect.
- (c) disapprove the objections by a two-thirds vote in which case it goes into effect unless the President refers the issue to the people for their decision.

The districts and the lists.

Distributing the surplus votes.

35-
elect. dist.
17.
unions

General theory of the German electoral system.

number of seats assigned to each district. Each political party, or any other group of voters, may nominate a list of candidates for the electoral district and may include in this list any number of candidates. Ballots containing these district lists are then printed. The voter, when he goes to the polls on election day, does not express his preference for individual candidates but must vote for an entire district list or ticket. Each political party also puts forth a union list, and a national list for the whole country (as will presently be explained), but these lists are not presented to the voters at the polls. Then, when the ballots are counted, each district list is allotted one seat for every 60,000 voters who have expressed their preference for it. If, for example, the Social Democratic list has been chosen by 182,000 voters in one of the thirty-five districts, the three first candidates on this list are declared elected; if the Centrum list has polled 63,000 votes, the candidate whose name stands first on it is declared elected.

But this is only the first step. What about the surplus votes, the fractions of sixty thousand? To the end that these may be proportionally counted, the thirty-five election districts are grouped into seventeen unions and the surplus votes of each party ticket in the districts within the union are combined. If, when so combined, the party's surplus exceeds 60,000 votes, it gets an additional member. Here, again, there may be some votes to spare, and the theory of the system is that none go to waste. So the surplus votes of each party ticket in the seventeen unions are combined for the Reich as a whole, and a further allotment of seats is made to the national lists on the basis of one member for every 60,000 surplus votes. The elected candidates are taken from the top of the list downward. Finally, if a surplus of votes still remains, every fraction over 30,000 entitles the party to an additional member from its national list. The law provides, however, that no party may be given more seats by combining its surplus votes in the unions and in the whole country than it has already elected in the thirty-five districts.

The Reichstag is thus made up of members elected by districts, by unions, and by the country at large. Each major political party prepares a ticket for the whole Reich and one for each of the thirty-five districts. Lists for the seventeen unions are made by combining the district lists of the party. Bear in mind that the voter, in casting his ballot for the district list, merely registers his affiliation

with one of the various parties without indicating any preference as to individual candidates. The system assumes that the voter is interested in policies, platforms, principles—not in personalities. It also assumes that candidates whose names come first on each list are the ones whom the party most desires to have elected.

In its actual workings this plan of proportional representation gives a great advantage to the political parties which are organized on a nation-wide basis. It discourages purely local parties, in as much as surplus votes cast for any party cannot be counted unless it has union lists and a list for the Reich at large. The provision that no party may be given more seats at large than it has already won in the districts is also a handicap upon the weaker parties. Nevertheless, at the general election of 1930, seven parties obtained representation in the Reichstag and on the whole the final apportionment of seats turned out to be tolerably in accord with the preferences of the people as indicated by the popular vote.¹

Its actual workings.

Elections for the Reichstag are held throughout Germany on the same day. This election date must be a Sunday or a national holiday. The electoral law provides for the establishment of an election board in each district, also boards for the unions, and a board for the Reich. The district boards are responsible for preparing the register of voters and are allowed to devise their own methods for performing this function. The ballots are printed by the party organizations, but plain envelopes are provided at the polls for the use of the voters. Each voter, when his name has been checked in the poll book, enters the voting booth, takes his "list" from his pocket, puts it in the envelope, seals it, and hands it to the officer in charge of the poll. There is no marking of ballots, but the voting is strictly secret.

Reichstag elections.

Disputed elections are not determined by the regular courts, as in England, nor yet by the legislative body itself, as in the United States. Provision is made for a joint electoral commission composed of the members of the Reichstag and judges of the highest administrative court. The former are designated by the Reichstag, the latter by the presiding judge of the court. This joint electoral commission not only determines the validity of any

Disputed elections.

¹ An electoral reform law, however, has been approved by the national cabinet and will be under discussion in the next Reichstag.

contested election but decides whether any member has forfeited his seat. Its decisions are not subject to review or appeal.

The Reichstag's sessions.

The Reichstag meets annually in regular session on a date fixed by the constitution (the first Wednesday in November), but it may be summoned by the President at an earlier date and must be so called if at least one-third of the members demand it. The President may dissolve the Reichstag on the advice of the chancellor, but there can be only one dissolution for the same cause, and every dissolution must be followed by an election within sixty days. The President cannot adjourn the Reichstag or close its session otherwise than by dissolving it. The foregoing provisions, it will be noted, differ from those which exist in England, France, and the United States.¹

Procedure and committees.

The Reichstag adopts its own rules of procedure, chooses its own presiding officers, and appoints its own secretaries. The pay of its members is left to be regulated by law. The rules of procedure which have been adopted are not unlike those of other parliamentary bodies except that the method of selecting committees is wholly different from that pursued in England and in America. The basis of selection is the party group. Each party group (if it comprises not fewer than fifteen members) nominates one or more members of every committee according to the principles of proportional representation. In other words, if a committee has twenty-one members a party controlling one-third of the Reichstag would be given seven committeemen. This means that the majority bloc gets a majority on every committee.

The party caucus.

But all important measures, besides being referred to committees, are considered by the members of each party at a caucus. If the bill be one of great importance, two or more party groups sometimes meet together in a joint caucus with a view to reaching a common course of action. The parties which form the controlling bloc meet in joint caucus frequently. These caucuses, whether of single parties or of blocs, give instructions to their representatives on the committees. Hence the deliberations of the Reichstag as a whole are virtually controlled by party caucuses. Before the

¹ In England the crown, on the advice of the cabinet, may prorogue or dissolve the House of Commons at will. In France the President, on the advice of the ministry, may adjourn both chambers, and with the concurrence of the Senate may dissolve the Chamber of Deputies, but has not done this for nearly fifty years and is not likely to do it. In the United States the President may neither prorogue nor dissolve the House of Representatives under any circumstances.

issue comes to a vote on the floor of the House, everything is usually settled. The vote in the House is merely a ratification of what has already been decided upon by the party groups. Thus, as one writer has remarked, a German ministry is not often defeated; it merely retreats before the formal voting takes place. If the caucus insists, the ministers alter their policy or resign, and when they have satisfied the caucus they have nothing to fear in the House.

Most of the important measures are introduced by the ministry with the approval of the Reichsrat or with various amendments proposed by the latter. But measures may also be laid before the Reichstag by its own members. In either case the bill goes to a committee and may be considered at once, but if it be very important the committee waits until the caucuses have acted upon it. The work of the Reichstag committees, for this reason, is of smaller consequence than is the work of legislative committees in England or the United States. There are various regular committees, namely, a committee on foreign affairs (which is made mandatory by the constitution), on rules, on education, on petitions, on commerce and industry, on finance, on the civil service, on audits, on justice, and on the budget. In addition there is a committee "for protecting the rights of the representatives of the people." It keeps on sitting when the Reichstag is not in session and serves as a watchdog against any attempts at executive usurpation. From time to time, as occasion arises, the Reichstag also appoints special committees and it may at any time set up committees of inquiry with the right to investigate any branch of the administration.

How bills
are consid-
ered.

Debates in the Reichstag bear outwardly a close resemblance to those in the Chamber of Deputies. This is because of the physical setting. The seats are arranged in a semicircle; with the conservative groups sitting at the right and the radical groups at the left. There is a tribune at the front of the chamber and each member who addresses the house must do it from this platform. The speeches, for the most part, carry little weight with the Reichstag inasmuch as most questions have already been settled in the party caucuses. What is said from the tribune is for public consumption. The old Reichstag was a tolerably well-behaved assembly and rarely got out of hand, but its successor has been more turbulent. This is due to the intense feeling in the delegations at the

The de-
bates.

two extremes, the Hitler Nationalists (or Fascists) and the Communists. Sessions are open to the public, but by a two-thirds vote the House may order its galleries to be cleared. The Reichstag elects its own presiding officer and the maintenance of order, not only in the chamber but in the whole building, is entrusted to him.

Questions
addressed to
the minis-
ters.

Members of the ministry may attend all sittings of the Reichstag and seats are reserved for them. They must attend committee meetings when requested. They may speak on any question at any time, even though by so doing they interrupt the regular order of business. Any member of the Reichstag may address questions to the ministers, but these questions must be in writing, and they are answered by the reading of a written reply. No discussion or vote follows. Questions are propounded in large numbers and the reading of the answers takes a good deal of the Reichstag's time. As many as fifteen or twenty replies are sometimes read at a single sitting. It is a tedious performance because the questions often concern trivial matters in which most of the members are not interested. Nothing is said in the constitution with respect to interpellations, but the rules of the Reichstag provide that an interpellation may be addressed to the ministers by any thirteen members. As a matter of practice, they are rarely proposed except after caucus action by some one or more of the party-groups. When an interpellation is filed with the presiding officer, he transmits it to the minister whom it concerns, and the latter in conference with him fixes a date for the discussion. The minister may refuse to accept an interpellation but this he never does unless reasons of state make a public discussion of the matter inadvisable. So the interpellation is set down on the Reichstag's calendar and a reply is made by the appropriate minister when the time comes.

Interpella-
tions.

No vote
follows
them.

Thereafter no debate ensues unless at least fifty members demand it. If this demand is made a debate begins and continues until every member who desires to speak has spoken. But no vote is taken to close the debate, as in France. The Reichstag, having talked itself out, automatically passes to the next item on the calendar. Hence, unlike the Chamber of Deputies, it does not use the interpellation as a means of ousting ministers, but merely as an opportunity for the various party leaders to declare their attitude upon questions of public interest. If it desired to overthrow the ministry a resolution plainly expressing want of confidence can be introduced at any time.

The framers of the German constitution took rather kindly to the initiative (Volksbegehren) and referendum (Volksentscheid). They made provision whereby both may be used. Bills may be initiated by petitions bearing the signatures of at least one-tenth of the qualified voters. Such bills, unless enacted into law without amendment, must be submitted to a referendum at the polls. A majority of those actually voting is sufficient for the adoption of a law; but for amendments to the constitution a majority of all the registered votes is required. A referendum may also be had on any measure passed by the Reichstag if at least one-third of the Reichstag's members demand that its promulgation be deferred for two months, and if, in this interval, one-twentieth of the qualified voters petition to have the measure submitted to the people.¹ Finally, the President of the Reich may withhold the promulgation of any law until the people have accepted it at a referendum.²

The initiative and referendum in Germany.

From the nature of things, however, the initiative and referendum cannot be very freely used. In Germany there are more than forty million registered voters. An initiative petition therefore requires over four million signatures and a petition for a referendum on a law already passed needs half that number. Obviously there will not be much popular participation in the making of the national laws. During the years that have elapsed since the constitution went into force the process has been used on only two occasions. The first was in 1926 on the question of compensating the former royal families for the property which had been taken from them. The second was on the adoption of the Young Plan for the payment of reparations.³

They are not easy to use.

The German constitution provides for two classes of regular tribunals—ordinary courts and administrative courts. Ordinary jurisdiction is exercised by a national supreme court (Reichsgericht) and by the courts of the various states. There are no subordinate federal courts as in the United States. The state courts possess original jurisdiction in all ordinary matters arising under state and federal laws alike, but the Reichsgericht is the court of last resort for most of these appeals. Not in all cases, however, because the special courts mentioned in the next paragraph also have final

The German judiciary:

¹ A referendum may not be ordered on the tax laws, however, or on the budget, or on the classification and payment of public officials unless the President authorizes it.

² See *above*, pp. 625-626.

³ See pp. 674-675.

jurisdiction within their own fields. But the usual course of a civil controversy is from the Amtsgericht (county court) to Landesgericht (district court), and thence to the Oberlandesgericht (provincial court in Prussia and Bavaria; state supreme court in the other states), with a further appeal to the Kammergericht (state supreme court) in Prussia, and a final resort from all the states to the Reichsgericht or supreme court for Germany as a whole. It need hardly be added, however, that not all cases can be appealed to the highest court. The constitution left the old Reichsgericht of the imperial period substantially unchanged. The Reichsgericht sits at Leipsic (not in Berlin) and is a large body, having ninety-one judges. Like the court of cassation in France it does its work in sections.

1. The Reichsgericht.

2. The special courts.

In addition to the Reichsgericht there are two or three special high courts, each with final jurisdiction within its own field. For example, the Reichsfinanzhof (national finance court) has final jurisdiction in certain controversies relating to taxation, and the national economic court which has been given jurisdiction over the settlement of war contracts and various other matters. In a sense these special courts may be called administrative tribunals but their competence extends to some matters of ordinary civil jurisprudence.

Judges and juries.

The judges in all the regular courts are appointed for life and cannot be transferred or demoted without their own consent. They are not selected from the membership of the legal profession in general, as is the case in England and the United States, but must be men who have had special preparation for a judicial career. In Germany, as in France, the judiciary is a special profession. Trial juries, in the American sense, are not used in the trial of cases, but in the district courts and in the superior courts jurors are chosen to sit with the judge or judges—from two to six lay jurors. They have equal votes with the judge or judges in deciding on a verdict. Attached to every court are one or more prosecuting attorneys, who also are appointed and never elected. The law which the ordinary courts administer is embodied in a series of codes, notably the civil, criminal, and procedural codes, which apply uniformly throughout the Reich.

3. The administrative courts.

Provision is also made for a system of state and national administrative courts, "to protect the individual against orders and decrees of the administrative authorities." The constitution does

not stipulate how these courts shall be organized or what their jurisdiction shall be; everything is left to be determined by law. But there was a system of administrative law and administrative courts during the imperial régime. They functioned as in other continental countries and were regarded as affording a much-valued protection to the liberties of the citizen. The framers of the new constitution assumed that they would be continued and thus far the laws have made very little change either in administrative jurisprudence or in the structure of the administrative courts. In a general way the system resembles that of France and hence does not require further discussion here except to mention that in the larger German states there are two or three gradations in the administrative courts. Moreover there are several national administrative courts for special purposes, but as yet no separate administrative tribunal of last resort has been established.

A large part of the new constitution is devoted to an enumeration of the fundamental rights and duties of German citizens. This bill of rights is the principal feature drawn from the American constitutional system. In some cases the terminology is borrowed almost literally—for example, the provision, that “no ex post facto law shall be passed,” that private property may not be taken for public use except “by authority of law” (*auf gestzlicher Grundlage*) and “with just compensation” (*angenessene Entschädigung*). On the other hand, the German bill of rights is more specific than the American, and it differs in its grouping of political precepts with economic guarantees. “All Germans” (not all persons, be it noted) are declared to be “equal before the law.” Privileges and discriminations arising out of birth, rank, and sex are abolished. So are all titles of nobility, and titles of every other sort except those which designate an office, a profession, or an academic degree.¹

The bill of rights in the Weimar constitution.

No German may accept a title or order from any foreign government. This prohibition goes farther than the corresponding one in the constitution of the United States which forbids the acceptance of foreign honors or emoluments by government officials only, and permits even this with the consent of Congress. Various other old institutions and practices were swept away at Weimar. The maintenance of an established church is forbidden. Private

Some strict limitations.

¹ An exception is made in the case of orders and decorations conferred for services during the years 1914-1919. Article 175.

schools, as substitutes for public schools, are prohibited except with the approval of the government. Private preparatory schools are forbidden altogether.

The saving clause attached to some of the guarantees.

The German bill of rights does not restrict itself to prohibitions alone. It asserts a long list of fundamental civic rights that must not be infringed—for example, the right to freedom of emigration, freedom of speech, and freedom of the press. But in many instances it takes the heart out of these constitutional guarantees by adding that “exceptions may be made by law,” or words to that effect. The constitution declares, for example, that “the house of every German is his sanctuary and is inviolable”—a Teutonic adaptation of the old adage that an Englishman’s house is his castle. But the German bill of rights adds a provision that exceptions to the rule may be made by authority of law and thereby softens the rigor of this constitutional guarantee. It is not to be assumed, however, that the framers of the German constitution failed to appreciate the true significance of their action in this regard. They probably realized full well what they were doing when they provided that various constitutional rights might be infringed by authority of law if necessity should arise. Their idea was to enunciate certain principles which seemed to them to be worthy of observance under ordinary conditions, but it was not their intention that these principles should be absolutely binding upon the national parliament in all cases whatsoever.

Merits of this arrangement.

There is something to be said for this point of view. When the guarantees incorporated in a bill of rights are too comprehensive, and stand in the way of what the legislature earnestly desires to do (especially in war time), then it is reasonably certain that some means of narrowing or weakening the guarantees will be found—usually by judicial interpretation. That is what has happened in the United States. The stipulation that Congress shall make no law abridging the freedom of speech, or of the press, does not now mean what it says. It means that Congress may abridge freedom of speech and of the press to the extent that the national security requires, in other words that exceptions may be made by law when the exigencies so demand. The main difference is that in Germany the question whether there is need for an abridgment rests with the Reichstag; in America it is ultimately settled by the courts.

The Weimar constitution, taking it as a whole, is a document of the greatest interest to students of comparative government. It

contains many strong and striking provisions. But the vital question is: Does it meet the needs of the German people, and will it endure in its present form? For about ten years it seemed to be slowly gaining ground, but the general election of 1930 demonstrated the existence of a widespread dissatisfaction with it. The two party-groups which desire a complete overhauling of the German governmental system were the ones which gained most substantially at this election. Fortunately for the constitution, however, these two groups (Nationalists and Communists) want utterly different kinds of overhauling and would never be able to agree upon any program of constitutional reconstruction. But the danger is that by their persistent clogging of the present mechanism they may render it unworkable.

Will the
Weimar
constitution
endure?

An English translation of the new German constitution, by William B. Munro and Arthur N. Holcombe, is published by the World Peace Foundation (Boston, 1920). This translation is also printed as an appendix in Brunet's book (see *below*) and in Bouton's book on the imperial abdication (see *above*, p. 613). Somewhat different renditions may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 167-212; in George Young, *The New Germany* (New York, 1920); and in Otis H. Fisk, *Germany's Constitutions of 1871 and 1919* (Cincinnati, 1924). The last-named volume is valuable in its comparison of the various drafts which were laid before the Weimar assembly.

Of commentaries on the new constitution there is an abundant supply. The most convenient for student use is Karl Pannier, *Die Verfassung des deutschen Reichs vom 11 August, 1919* (in Reclam's Universal Bibliothek, Leipsic, 1929); but mention should also be made of G. Anschütz, *Die Verfassung des deutschen Reichs* (7th edition, Berlin, 1927); Conrad Bornhak, *Die Verfassung des deutschen Reichs* (2nd edition, Munich, 1921); and of volumes bearing the same title, by Godehard Ebers (Berlin, 1919); by Fritz Stier-Somlo (3rd edition, Bonn, 1925); and by Otto Bühler (Berlin, 1922). A full bibliography may be found in F. F. Blachly and M. E. Oatman, *The Government and Administration of Germany* (Baltimore, 1928). This treatise on the principles and practices of German government also contains an English translation of the Weimar constitution.

Special mention should be made of René Brunet's *La constitution allemande du 11 août, 1919* (Paris, 1921) of which there is an English translation by Joseph Gollomb (New York, 1922). This book may profitably be studied, side by side, with Otto Meissner's *Das neue Staatsrecht des*

Reichs und seiner Lander (Berlin, 1923). Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928) is a useful book, with a good bibliography, and so is H. Quigley and R. T. Clark, *Republican Germany* (London, 1928). Julius Hatschek, *Das Reichstaatsrecht* (Berlin, 1924) is a standard treatise on German constitutional law, and Robert Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche* (24th edition, 1929) is an old standby. A volume on *The Constitution of the German Republic*, by H. Oppenheimer (London, 1923) also deserves mention. A brief survey of the new German constitution may be found in Malbone W. Graham's *New Governments of Central Europe* (New York, 1924), pp. 32-72.

CHAPTER XXXIII

THE NEW GERMAN GOVERNMENT AT WORK

Constitute government how you please, infinitely the greater part of it must depend upon the exercise of powers which are left at large to the prudence and uprightness of ministers of state. Even all the use and potency of the laws depends upon them. Without them your commonwealth is no better than a scheme on paper; and not a living, active, effective, organization.—*Edmund Burke.*

The workings of a government are not wholly determined by the nature of the constitution or the laws. Neither do they wholly depend on the structure of parliaments or ministers. The men who do the routine work have it in their power to give the government an orientation quite different from that which the constitution intends. Thus the spirit of the German government before the war was moulded in large measure by the great body of permanent functionaries who constituted the civil service of the empire and the states. They were commonly known as "the bureaucracy." In thoroughness of organization, training, and discipline the old German civil service and the old German army were on a par. The officials of the bureaucracy became a governing class with a solidarity which made them virtually all-powerful. It was by this group of bureaucrats, not by the elected representatives of the people, that the general temper of German government was determined in the years preceding the world war. They made the government efficient,—probably the most efficient in the world. They also dehumanized it.

The old bureaucracy.

THE NEW BUREAUCRACY

Then came the Revolution of November, 1918. Within a few days this highly efficient, bureaucratic, centralized, imperial government was transformed into a republic, and a socialist republic at that. A saddlemaker climbed into the emperor's seat, while men with proletarian names took the swivel chairs that had hitherto been occupied by princes, counts, barons, and junkers. But although a ministry can be improvised, a whole civil service cannot.

Not displaced by the revolution.

The new socialist ministers did not dare oust the bureaucracy which had functioned during the imperial age, for such action would cause the mechanism of administration to break down. So they kept the whole body of subordinate officials intact and called upon them to assist in the furtherance of the new policy.

The Ordinance of 1923.

For a time after the new constitution went into effect the government was so fully occupied with urgent tasks of finance, diplomacy, and reconstruction that it could give little thought to an overhauling of the civil service; but within the past few years various new laws and ordinances have made changes in its organization and methods. Notable among these was the Personnel Reorganization Ordinance of 1923, by which the government endeavored to deflate the public pay roll which had swollen to huge proportions during the war. The provisions of this ordinance were utilized to strike from the civil list many employees of doubtful efficiency and to appoint in their place those whose fidelity to the republic was not open to question.

The German civil service of to-day.

In theory all officials (Beamten) of the Reich are appointed by the President but he may delegate this power and he has done so as regards all except the highest officers. The heads of departments and of bureaus appoint their own subordinates in accordance with the provisions of the civil service code (Law of Public Officers). But the consent of the minister of finance is required before any new appointee can be added to the pay roll, this restriction being imposed in order to protect the budget.

Appointments and dismissals.

German administrative officials are appointed for life unless otherwise specified in the laws which authorize their appointment. Every salaried official of the Reich is entitled to retire on a pension at the age of sixty-five, or he may have his pension at an earlier age if he becomes incapacitated for service, provided he has been in office for at least ten years. The widow and the minor children of an official are also entitled to pensions. No administrative official may be dismissed except by a formal disciplinary process which is prescribed by law. This involves a hearing and investigation before an official disciplinary court with the right to be represented by counsel.

No competitive examinations.

Appointments to positions in the public service are not made by formal competitive examinations as in the United States. But various general qualifications are laid down by the civil service code and these are usually supplemented by additional qualifica-

tions which the various departments prescribe for appointments within their own respective fields. For all higher appointments a university training is required, followed by a first examination, then by three years or more of training in law and administration, and finally by a second examination. In the case of lower positions the general qualifications are not so high but they usually include school certificates, special training or experience in the work to be done, and often an examination as well. Those who qualify are put on a waiting list for appointment when vacancies occur. Certain preferences are given to veterans who were wounded in the world war. All appointments are first made for a probationary period and the official is not placed on the permanent list until his capacity has been demonstrated.

Salaries in the public service are regulated by a national salary law which was passed in 1927. There are twelve groups of classified officials ranging from postmen to directors of national institutions. In each group there are minimum and maximum rates of pay, with stated increases according to length of service. The national salary law also provides for such adjustments as may be made necessary by the unequal cost of living in different parts of the country. The German constitution guarantees to everybody, including public officers, "the right of combination for the protection and promotion of labor and economic conditions," but the German supreme court (Reichsgericht) has ruled that this guarantee does not give public employees the right to strike. Hence the laws now forbid them to desert their posts or suspend work under penalty of dismissal.

Classified
salaries.

No right to
strike.

In the United States it is a general rule of law that the national and state governments are not liable to suits for damages when injury is done to private individuals or their property by public officials or employees. Suits in such cases may be maintained against the official, but not against the government which employs him. In Germany there is a different rule. There the laws provide that the Reich must assume liability for any wilful or negligent breach of duty on the part of its officials. Actions to enforce this liability may be brought by individuals in the regular courts. If damages are awarded, these are paid out of the public treasury, but the government is given the privilege of reimbursing itself by withholding the pay of the official who has been at fault.

Liability for
the acts of
public offi-
cials.

The German public service as a career.

Members of the German civil service enjoy many rights and privileges—security of tenure, protection against suspension or dismissal as well as against demotion by transfer, the opportunity of promotion under fair conditions, liberal salaries with stated increases, pensions on retirement, freedom to organize, and a high social position. The prestige attached to public service was very great under the old régime and it continues to be high under the new dispensation. The public service in Germany is a profession, a life career. It draws into its ranks a high grade of ability. The continued efficiency of German administration has resulted in large measure from the maintenance of these high official standards.¹

THE SYSTEM OF PUBLIC FINANCE

National revenues before the war.

Among changes in the workings of German government since the Revolution of 1918 none have been more significant than those connected with financial administration. The old constitution set aside certain sources of revenue (such as customs and excises) for the exclusive use of the central government while direct taxation was for the most part left to the states and municipalities. Rather curiously, however, the central government did not collect its own taxes (with the exception of customs duties) but let the states do it and hand over the proceeds. Thus, although the imperial government had a large revenue it had no financial officers except the few supervisors and auditors whose duty it was to make sure that the states collected what was due and then accounted for it all.

The Reich's new taxing powers.

This plan functioned well enough until the war when taxes had to be greatly increased. With this increase there were numerous attempts at evasion, and the inequalities of assessment also became more noticeable in the various states. The result was widespread complaint and protest. The framers of the new constitution deemed it wise, therefore, to make such provision as would ensure reasonable uniformity in the assessment and collection of national taxes throughout the entire Reich. To this end they gave the central government control over virtually the whole field of taxation, direct and indirect, in the following words:

¹ Leonard D. White, *Civil Service in the Modern State* (Chicago, 1930). This is a collection of documents published under the auspices of the International Congress of Administrative Sciences.

"The Reich also has jurisdiction over taxation and other sources of income insofar as they may be claimed in whole or in part for its purposes. If the Reich claims any source of revenue which formerly belonged to the states, it must have consideration for the financial requirements of the states." (Article 8)

The second sentence of this provision is a mere admonition and cannot operate as a real constitutional restraint. National governments, as a matter of practice, do not often show much consideration for the financial requirements of subordinate authorities when their own needs are urgent. Moreover, the new constitution empowers the German national government to "prescribe fundamental principles concerning the assessment and collection of state taxes" whenever such action is necessary to protect its own interests. This gives it a potential veto on any new tax which the states may desire to levy. Finally, there is a provision that the central government shall control the organization of the state tax administrations insofar as such regulation may be necessary to assure the "uniform and impartial execution of the national tax laws."

The loose limitations upon them.

As a result of these new powers the central government now administers, through its own officials, not only the assessment and collection of national taxes but also some of the state taxes as well. The proceeds of the latter it hands over to the states minus the cost of collection. Thus the pre-war arrangement has been pretty much reversed. The national authorities have also made much of their power to control the scope and methods of state taxation during the past dozen years. They have insisted that national needs and national taxes shall have the right of way. In general no new tax project in any state or municipality can be carried into effect until it has been submitted to the national minister of finance for his approval. If he disapproves the project on the ground that it is in conflict with the national tax laws the state may appeal to the national finance court (Reichsfinanzhof) which has authority to decide such controversies. If, however, the disapproval has been given on other than legal grounds, for example, on the allegation that the proposed state tax would be inexpedient, the appeal goes to the national council (Reichsrat).

National control of local taxation.

For the most part the field of property taxation is still left to the states. They also retain the motor vehicle tax but must use the proceeds for the construction and improvement of roads. They

Present division of revenues.

also get from the central government a share of the national income taxes. In return for this the national minister of finance is empowered to scrutinize the annual budgets of the states and municipalities in order to make sure that the money which the central government turns over to them is being properly used.

The minister of finance.

Thus the apex of German financial administration is the minister of finance, who is a member of the national cabinet. He is assisted in the work of assessment and collection by state finance offices and by district finance offices, the personnel of which is appointed by himself.¹ At present, however, this personnel is largely made up of former financial officials of the states who were taken over bodily into the new national tax administration. This hierarchy of tax offices is a significant feature of the new centralization. It brings all the agencies of tax administration under the ultimate control of the ministry. There would be dangers in this were it not that a system of finance courts is established to protect the taxpayer with final recourse to the national finance court (Reichsfinanzhof).

His preparation of the budget.

The minister of finance is also the pivot upon which the German budget system revolves. The essential features of this budget system are prescribed by the new constitution, but the details are regulated by law. The estimates of income and expenditure are prepared by the various departments and sent to the minister of finance who consolidates them into a tentative budget. In doing this he may decrease or eliminate any items which he does not approve but if a department objects to this action it may appeal to the cabinet. This is not usually done, however, unless the matter is one which raises some question of general policy.

How the budget is passed.

When the tentative budget is ready it goes first to the cabinet where the minister of finance gives a full explanation of it to his colleagues. The cabinet may make changes by majority vote and sometimes does so. Then the estimates go to the Reichstag accompanied by a budget bill which is given its first reading and then referred to the regular budget committee. This committee, which consists of twenty-eight members, examines the various items and makes its recommendations for increases, decreases, eliminations, or insertions. The committee does not make a single report to the Reichstag but sends in its recommendations as it goes along. As a matter of habit it recommends many changes every year. Then

¹ There are 26 state finance offices and about 1000 district offices.

the budget bill gets its second reading in the Reichstag, with a debate on the floor. Many of the budget committee's recommendations are always adopted by the House and this action is not construed to mean a want of confidence in the cabinet. At this stage, moreover, amendments can be proposed by individual members, but such amendments must have the support of at least fifteen members before they can be considered. When the debate is finished the bill is passed and sent to the Reichsrat or second chamber. Any increases or new items which have been adopted by the Reichstag must ordinarily have the consent of the second chamber, but its refusal to give this consent can be overridden as in the case of other bills.¹ Thus far, however, the Reichsrat has not held out against the elective House in budget matters.

The German budget system bears a closer resemblance to the American than to the English model. The initiative, in all three countries, is with the executive branch of the government. In England, however, the responsibility is unified, for the chancellor of the exchequer puts his budget through the House of Commons with the full force of the ministerial majority behind him. No important changes are made without his consent. No proposal for an increase or for the insertion of new items can be made by individual members. But in Germany, as in America, the legislative body can make changes, and does so, in opposition to the executive recommendations. Individual members in the Reichstag, as in the House of Representatives, may also propose new expenditures. In budget matters, incidentally, the United States Senate is much more powerful than either the House of Lords or the Reichsrat.

A comparison with English and American procedure.

It is as yet too early for any appraisal of the new German government's financial apparatus. It is highly-organized and potentially efficient. But the series of economic emergencies through which the Reich has passed during the years since the system was established—the inflations and deflations, the wide fluctuations in prices, the large reparations payments—these have precluded the new financial system from having a fair chance.

THE ECONOMIC PARLIAMENT

In the workings of German government since 1919 one of the most interesting experiments has been connected with the plan for a

The problem of socialization.

¹ See *above*, p. 631.

national economic council or parliament of industry. The background for this experiment is to be found in the fact that Germany, before the war, was more highly socialized than any other great European power. Public ownership, social insurance, and the regulation of industry by law were carried to a farther extent there than elsewhere. It was accordingly not difficult for the people, on the morrow of the revolution, to grasp the conception of a government which would take over the control of all economic life.

Two plans
and a com-
promise.

The Independent Socialists wanted this done forthwith, after the Russian fashion. The Social Democrats, on the other hand, desired that it be done by easy stages and after careful deliberation at each step. In the end the Social Democrats had their way, but subject to a promise that the new constitution would provide for workers' councils and some sort of economic parliament. This agreement was in the nature of a compromise between the orthodox plan of political representation and a scheme of vocational representation on the soviet principle. It was a compromise, however, in which the friends of purely political representation managed to secure by far the better of the bargain.

The famous
Article 165
of the
Weimar
constitu-
tion.

The Weimar assembly, therefore, decided to establish a parliament of the political type, organized on a basis of geography, not vocations. It had no difficulty in reaching this decision by an overwhelming majority. But it nevertheless proceeded to carry out the promise made by the Social Democratic leaders during the revolution by inserting provision for workers' councils and economic councils which should exist and function parallel with the political organizations although not with equal powers. Hence the framing of Article 165 which is not only the longest but the most interesting provision that the new German constitution contains. This article frankly recognizes the principle that all matters relating to wages, working conditions, and the entire development of industry should be regulated by a series of workers' and economic councils in which the wage-earners and the employers should be represented on equal terms. The plan cannot be more concisely described than in the words of the constitution itself:

"Wage-earners and salaried employees are entitled to co-operate on equal terms with the employers in the regulation of wages and working conditions, as well as in the entire economic development of the productive forces. The organizations on both sides and the agreements between them will be recognized.

"The wage-earners and salaried employees are entitled to be represented in local workers' councils, organized for each establishment in the locality, as well as in district workers' councils, organized for each economic area, and in a national workers' council, for the purpose of looking after their social and economic interests.

"The district workers' councils and the national workers' council meet together with the representatives of the employers and with other interested classes of people in district economic councils and in a national economic council for the purpose of performing joint economic tasks and co-operating in the execution of the laws of socialization. The district economic councils and the national economic council shall be so constituted that all substantial vocational groups are represented therein according to their respective economic and social importance.

"Drafts of laws of fundamental importance relating to social and economic policy, before introduction into the Reichstag, shall be submitted by the ministry to the national economic council for consideration. The national economic council has the right itself to propose such measures for enactment into law. If the ministry does not approve them, it shall, nevertheless, introduce them into the Reichstag together with a statement of its own position. The national economic council may have its bills presented by one of its own members before the Reichstag.

"Supervisory and administrative functions may be delegated to the workers' councils and to the economic councils within their respective areas.

"The regulation of the organization and duties of the workers' councils and of the economic councils, as well as their relation to other social bodies endowed with administrative autonomy, is exclusively a function of the Reich."

In principle, the wage-earners and salaried employees are organized locally into workers' councils; these councils in each economic area are represented by delegates in a district council, and these district councils, in their turn, choose delegates to a national workers' council for the whole Reich. The employers, on the other hand, are also organized into district and national associations. Then both the workers' councils and the employers' associations coöperate, on equal terms, in district economic councils and in a national economic council. This last-named body is an economic congress, but with no such wide and final powers as were proposed in England by the Webb plan.¹

An explanation of the article.

¹ See *above*, pp. 262-263.

Powers of
the na-
tional eco-
nomic
council.

The functions of the German national economic council are for the most part advisory, but it also has certain powers of initiative in legislation. When the national ministry prepares any law of fundamental importance relating to social or economic policy it is required to submit the measure to the national economic council before introducing it in the Reichstag. If the measure be disapproved by the national economic council it may nevertheless be presented to the Reichstag and passed by that body. On the other hand the national economic council may itself prepare a draft of any such measure and may submit the same to the Reichstag either directly or through the ministry. Thus the national economic council, within its own field, is given much the same right of initiative as is accorded the Reichsrat; but it has no suspensory veto on laws such as the latter possesses.¹

What the
councils
were in-
tended to
do.

The provision that supervisory and administrative functions may be delegated by the national government to both workers' councils and economic councils is intended to admit these bodies to an active share in the work of socializing the German industries whenever this socialization takes place. The power to take over private business enterprises and operate them under public ownership is expressly given to the national, state, and municipal governments by the constitution, or, if they do not choose to undertake public ownership, these governments are empowered "to secure a dominating influence in any other way"—for example, by becoming majority stockholders in private business concerns.² The framers of the constitution felt that it would be difficult, and probably unwise, to have the government take over, supervise, and directly administer the management of industries through its own employees. Hence the provision that it may use the various councils as part of its socializing machinery by devolving the detailed work of management upon them.

The plan
has not yet
been fully
carried out.

The constitution does not set forth in explicit terms the methods by which the various councils are to be organized, or their functions, or the limitations upon their authority. These matters were left to be determined by national laws and decrees. It soon became clear, however, that any attempt to organize the whole system of councils, from bottom to top, would take many months and per-

¹ Above, p. 631, footnote. A full discussion of the national economic council and its work is given in Konrad Gesch, *Der Reichswirtschaftsrat* (Stuttgart, 1926).

² Article 156.

haps years of deliberation if the task were to be rightly performed. On the other hand various groups in the Reichstag were crying for some immediate action. So it was decided to make a beginning by creating a part of the system, and early in 1920 provision was made for the organization of the local workers' councils. A few months later a decree was issued establishing a provisional organization for the national economic council, with powers almost as broad as those indicated for it in the constitution, and with the additional duty of working out a plan for a permanent organization. In connection with the latter it was to suggest the method of organizing the intermediate or district councils. Although ten years have since passed, the national economic council is still functioning on this provisional basis and the district councils have not yet been organized. A plan for the permanent organization of the national economic council passed the Reichsrat in 1930 but was defeated on its third reading in the Reichstag.

The national economic council is composed of 326 members. These members represent both the workers and the employers in the various fields of economic productivity, together with the consumers, government employees, and the government itself. In all there are ten groups represented.¹ In the first eight of these groups the representatives are chosen by the executives or organizations specified in the decree which created the council; in the last two groups they are appointed by the Reichsrat and the ministry respectively. Agriculture, for example, is given sixty-eight representatives, divided among the agricultural employers, the agricultural laborers, the small farmers, and the agricultural societies. Men and women are alike eligible to serve as members of the council. Thus it embodies a fair representation of German economic life.

How the
national
economic
council is
organized.

¹ These groups are as follows:

I. Agriculture and Forestry.....	68	members
II. Gardening and Fishing.....	6	"
III. Industry.....	68	"
IV. Commerce, Banking and Insurance.....	44	"
V. Transportation and Public Utilities.....	34	"
VI. Handicrafts.....	36	"
VII. Officials and Professions.....	16	"
VIII. Consumers.....	30	"
IX. The German States.....		
(nominated by the Reichsrat).....	12	"
X. The German Nation.....		
(nominated by the ministry).....	12	"

Total..... 326 members

Nature of
its work.

But the national economic council is not a parliament of industry in the sense that the guild socialists use the term. Its powers do not parallel those of the Reichstag. In general its chief function is to receive from the ministry such government measures as are of an economic character and to consider these measures before they are acted upon by the German parliament. When an economic measure is brought forward by the ministry it goes first to the national economic council where it is referred to the appropriate committee. From the committee, after careful study, it was formerly reported to the whole council to be debated and voted upon. Since 1923, however, the whole council has ceased to meet. All its work is now done by the committees which send their reports to the secretariat of the council. This office transmits them to the national cabinet. It also coördinates the work of the various committees. The votes, whether in council or in committee, are recorded by groups and not by totals because the council's functions are advisory and it is desirable that the political authorities should know the attitude of the several groups on each project. When the consideration is finished the reports of the council's committees are made known to the two chambers, Reichsrat and Reichstag, for their information in acting upon the measure. The council is also empowered to initiate proposals of legislation on economic subjects, and to submit these to the ministry, but it has not yet been given a formal right to have its proposals laid before the Reichstag by the council's own members, as the constitution intended.

The measures that
have been
referred to
it.

Since its establishment the council and its committees have had many projects referred to them. These have related to such matters as railway rates, the regulation of waterways and harbors, the relief of unemployment, the hours of labor in industry, and many questions of similar import. In addition the council has put forth some projects on its own initiative, a few of which have been accepted by the ministry, introduced into parliament, and enacted into law. When measures come to the council they go direct to committees which study them with the help of experts. It was the idea that these committee reports would be discussed by all the groups represented in the national economic council and the failure to have this done has weakened the whole arrangement.

In general the work of the national economic council has not

measured up to expectations. Complaint is made by the workers that the public delegates (appointed by the government) usually side with the employers. Complaint is also made that since many members of the Reichstag have gained seats in the council, the latter has become a political body, a sort of auxiliary Reichstag with the same factional groupings. It would seem that this must inevitably be the case, for you cannot eliminate politics from a policy-determining body by merely calling it "economic" or by providing that its members shall be chosen in some newfangled way. The determination of public policy must inevitably be a political matter howsoever it is handled.

The council's weak features.

The work of the council's committees has also been considerably handicapped by the jealousy of various groups in the Reichstag, by the unfriendly or non-coöperative attitude of the ministers, and by the fact that a good deal of economic reconstruction had already been accomplished before the national economic council was established. The problem of finding the money with which to pay reparations, moreover, created economic difficulties which no body of men could easily cope with, whether in a political or in an economic parliament.¹ And the constitutional right of the national economic council to undertake the preliminary discussion of all measures bearing on industrial questions has not been fully respected by the ministers. Such measures have sometimes been referred to special commissions rather than to the council's committees.

Its serious handicaps.

Finally, the failure of the council to meet expectations is due in part to the absence of a clear national policy in the matter of government ownership. Public opinion in Germany has not been unanimous on the question of abolishing private industry and replacing it by state socialism or collectivism, although it seemed to be fairly so when the constitution was adopted. On the contrary it has been hopelessly divided. The Communists, and the more extreme Socialists, naturally desire that the policy of public ownership be put into operation immediately and on a general scale. The moderate Socialists desire that it be brought into operation gradually, one industry at a time. The more conservative parties in the Reich do not favor the policy at all. They desire

The lack of a consensus on national policy.

¹ A full account of the early difficulties encountered by the council may be found in Herman Finer's *Representative Government and a Parliament of Industry* (London, 1923).

to retain the old system of privately-controlled industry. At the Reichstag elections of 1924 there was a swing toward conservatism, and the presidential election of 1925 also gave new vigor to the old guard. At the elections of 1928 the moderate parties continued their control of the Reichstag; but in 1930 these middle parties lost ground to the extremists, both Right and Left. The government, therefore, has not been able to push forward with the process of socialization as the framers of Article 165 intended. What the future trend will be, it is not possible to say; but there does not seem to be much likelihood that the system of economic councils, as provided by the Weimar constitution, will prove permanent and satisfactory. Looking back upon the drift of the past ten years it is clear that the German revolution has turned out to be political, not economic. The old economic order remains substantially intact.

STATE GOVERNMENT IN GERMANY

The states
of the
Reich.

No sketch of German government in its practical workings can well omit some explanation of the way in which the states of the Reich are now being governed. There are fifteen of these states, together with three free cities.¹ According to the constitution of the Reich all these states and free cities must have a republican form of government, a responsible ministry, universal suffrage, and proportional representation. Apart from these requirements each may construct its own frame of state government as it pleases. All of them have adopted new constitutions since the revolution, and no two of these constitutions are exactly alike in all respects. Yet they do not display very marked differences. In all cases the states were prevailed upon to establish collegial executives after the Swiss model rather than unitary executives such as we have in American state government. And in all cases they made provision that this plural executive, or any member of it, may be ousted from office by a majority vote of the legislature. Most of the German states, under their new constitutions, have legislatures which consist of a single chamber only.

Prussia.

Prussia continues to be by far the largest, most populous, and most important of the fifteen German states notwithstanding the fact that she suffered a serious loss of territory as the out-

¹ That is, the cities of Hamburg, Lübeck, and Bremen which rank as states of the Reich.

come of the war.¹ Her new constitution was framed and ratified by an elective convention during 1920.² It provides for a state legislature of two chambers, namely, a Landtag or assembly, and a Staatsrat or senate. The Landtag is composed of members elected for a four-year term by universal suffrage according to the principles of proportional representation. The Staatsrat represents the various provinces of Prussia, roughly according to their respective populations.³ Its members are chosen by the provincial councils (in Berlin by the city council), but in making their selections the councils must use a system of proportional representation. The purpose of this requirement is to ensure that the entire delegation from a province shall not be chosen from any one political party. Members of the Staatsrat do not hold office for any definite term; they are chosen after each provincial election whenever that may come.

Her frame of government.

The assent of both chambers is ordinarily required for the passage of a law. But if the Staatsrat refuses its assent to a measure which has passed the Landtag, the bill goes back to the latter House, and if repassed there by a two-thirds majority it becomes effective. If the measure fails to obtain this two-thirds majority it does not become a law unless the Landtag determines to submit the issue to a popular referendum, in which case the people have the final decision. In the case of financial appropriations, however, the Landtag cannot overcome the opposition of the Staatsrat by a two-thirds vote if the action of the latter is in accord with the recommendations of the ministry, and no popular referendum can be taken on such measures.

Relation of the two Prussian chambers.

The Prussian constitution provides for both the initiative and the referendum. It makes the initiative applicable to constitutional amendments and to all laws except that this procedure may not be used in the case of laws relating to expenditure, taxation, or the salaries of public officials. The use of the initiative requires a petition signed by one-twentieth of the qualified voters in the case of ordinary laws and one-fifth in the case of constitutional amendments. The initiative may also be used to effect a dissolu-

Direct legislation in Prussia.

¹ She lost Upper Silesia and gave up the province of Posen to Poland, surrendered Danzig and the so-termed Danzig "corridor," and relinquished a part of Schleswig to Denmark as the result of the plebiscite.

² An English translation may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 217-232.

³ The city of Berlin is recognized as a province for purposes of representation in the Staatsrat.

tion of the Landtag, the requirement in this case being one-fifth of the entire electorate. A referendum is held upon each proposal made by use of the initiative, but may also be ordered by a resolution of the Landtag when the other chamber refuses its assent to measures passed by it. In any event a majority at the polls is sufficient to secure the adoption of a law, provided a majority of the qualified voters have expressed their opinions on the question, but in the case of constitutional amendments a majority of the qualified voters must actually be recorded in favor of the amendment or it fails.

The collegial executive.

There is no Prussian president. The ministry is the "supreme executive and directing authority of the state." It is headed by a prime minister who is chosen by the Landtag. He, in turn, appoints the other ministers. All members of the ministry are collectively and individually responsible to the Landtag. It is the function of the ministry to prepare bills for the consideration of the Landtag, to issue ordinances in execution of the laws, to appoint all public officials who are directly under its jurisdiction, and to exercise the power of pardon which in most countries is exercised by the chief of state. The ministry also appoints half the Prussian delegation in the Reichsrat, the other half being named by the provincial authorities.¹ In general it is entrusted with all the powers which ordinarily rest with the chief executive of a state, and in times of emergency, if the Landtag is not sitting, it may issue ordinances having the force of law.² But all such ordinances must be submitted to the Landtag when it meets, and if not then approved they cease to be valid.

Ministerial responsibility with a string tied to it.

The ministry as a whole, and the individual ministers, must possess the confidence of the Landtag at all times. But they may not be ousted except by a majority of the *total* membership. It is not enough that a majority of those present shall vote a lack of confidence in the ministry. This provision does away with the danger of upsetting ministers on snap votes. Rather than resign on an adverse vote the prime minister may dissolve the Landtag if he can secure the concurrence of the presiding officers in both chambers. But he cannot order a dissolution on his own responsibility. The Prussian system of ministerial responsibility does not exactly conform, therefore, to either the Swiss or the English

¹ See *above*, p. 629.

² There have been a great many of these ordinances.

model. It is unlike the former in that the ministers, on an adverse vote, do not merely alter their policy and stay in office.¹ They resign, as in England, but with this difference, that they can be ousted only by an adverse majority of the total membership and the prime minister is not the sole judge as to whether a dissolution shall take place. This attempt to combine a plural executive with full ministerial responsibility is a new experiment in state administration.

LOCAL GOVERNMENT

Local government in Germany, that is, the government of provinces, counties, cities and towns, is under the control of the several states. As in America the national government has no jurisdiction in this field. Most of the state constitutions provide that the provinces and the municipalities shall have home rule, in other words the right to administer independently their own local affairs, but they do not undertake to define just what matters are local in character. The Prussian provinces have their own elective councils, or diets, which choose provincial executives and hold them responsible. The old system of centralization in which the Prussian national authorities appointed the chief executives of the provinces has been entirely abolished. The cities are permitted to have either unitary or plural executives as they themselves may decide. Some have adopted one plan and some the other. In the former case there is a burgomaster elected by the city council; in the latter there is a body of magistrates similarly chosen. There are no popularly-elected mayors in German cities as in American municipalities. City councils throughout the Reich are elected by universal suffrage and proportional representation. They have virtually full control over all city affairs as in England.

The provinces and the cities.

Berlin, the capital of the Reich, is now the second largest city in Europe. Its population is now nearly four millions, while that of Paris is only three. In 1920 the city and its suburbs were federated, somewhat after the London fashion. There is a central city government which consists of a chief burgomaster, a burgomaster, an administrative board, and a city council. The members of the city council, 225 in number, are elected by universal suffrage. For council elections the whole city is divided into fifteen districts and a varying number of councilmen (seven to nineteen) are elected

The government of Berlin.

¹ See below, p. 740.

from each district under a system of proportional representation. Most of the political parties which figure in the national campaigns are active in the city elections; they prepare their respective slates or lists of candidates in each district and try to obtain their proportionate number of seats. The Social Democrats have the largest representation in the Berlin city council, but they do not control a majority.

The scheme
of city ad-
ministra-
tion.

The administrative board has thirty members. Of these eighteen are salaried members chosen for twelve-year terms while the rest are unpaid magistrates and hold office for four years only. Both classes of *Magistrate* are chosen by the city council in a way which affords representation to the various party groups. The city council also appoints the two burgomasters. There are nineteen administrative departments (public works, public buildings, public health, finance, law, schools, etc.) with a member of the administrative board at the head of each. He is designated to this position by the chief burgomaster and is assisted in his work by a joint commission (Deputation) which is made up of magistrates, councillors, and some private citizens. The administrative board prepares most of the business for the council, but the concurrence of the latter is needed on all important matters. The council controls all expenditures.

The Berlin
boroughs.

Greater Berlin, like London and New York, is divided into boroughs. There are twenty of them and they vary widely in population. Each of these boroughs (Bezirke) has a borough council which is composed of those members of the central city council who have been elected by the borough, together with a larger number of borough councillors independently elected. In this way the borough councils are tied up with the central city council more closely than is the case in London. There is a faint analogy in New York City where the presidents of the five boroughs are ex-officio members of the board of estimate and apportionment. Each Berlin borough also has a small administrative board which contains both paid and unpaid members. There are also joint commissions, but no borough burgomasters.

A division of functions between the central and the borough governments is made in Berlin,—as in London and in New York. This division is somewhat more complicated than in the latter cities but in general the central Berlin government has jurisdiction over public works, including water and sewerage, transportation,

public health, and schools. The boroughs have control of the more strictly local branches of municipal administration. In addition they serve as districts for the administration of the central services. Neither the central nor the borough governments has control of police. This branch of administration (as in London, Paris, and Washington) is directly under the control of the national authorities.

It may be worth digressing to stress the fact that in Great Britain, France, Germany, and the United States the national capital has been placed under a special dispensation. In none of these countries is the capital governed like other cities. It is a place apart. In the case of the first three countries the national capital happens also to be the national metropolis, and this serves as an additional reason for the existence of a *régime exceptionnel*. But Washington is far from being the largest city in the United States and its special tutelage appears therefore to have less justification. Americans, as a people, profess themselves to be genuine believers in the principle of local self-government and municipal home rule, yet so far as their national capital is concerned there is decidedly less exemplification of it than in any other country. For Washington has no self-government at all. It has neither mayor nor council. Its people do not vote. They are entirely disfranchised.

The Revolution of 1918 and its aftermath wrought great changes in the *form* of German government. Of that there can be no doubt. But whether it wrought anything like so great a change in the *spirit* and workings of German government is by no means an easy question to answer. Germany is still ruled to a considerable extent by her bureaucracy, despite all the innovations of the Weimar constitution. It is true that the great corps of administrative officials has been liberalized since 1919, but its old organization and ideals remain virtually unchanged. German officialdom seems to be still permeated with the idea that its function is not merely to carry out the will of the people but to lead the nation in the way that a world-power ought to go. Nor is this idea confined to official circles. The tradition of a professionalized government is deeply rooted among large sections of the people. It is far easier to liberalize a government at the top than at the bottom, and the question whether the process has filtered down to a sufficient extent in Germany is one that nobody is yet in a position to answer. The Germans have created a new state, but it will take at least

The problem of governing national capitals.

Has the spirit of German government changed?

another decade to settle the question whether it is a state with a new soul.

The best general discussion (in English) of the workings of the new German government is F. E. Blachly and M. E. Oatman, *The Government and Administration of Germany* (Baltimore, 1928). It contains a classified bibliography.

On the German civil service under the new régime, there is material in K. Delius, *Die Stellung der Beamtenschaft im neuen Staat* (Berlin, 1924), and H. Haussmann, *Die Büroreform* (1925).

The new financial and budgetary systems are discussed in Karl Friedrichs, *Grundzüge des Steuerrechts im Reich und in Preussen* (Berlin, 1925), and in Paul Buchholtz, *Grundriss des Haushalts-, Kassen- und Rechnungswesen im Reich* (1922). There is a good explanation of the budget law in R. Schulze and E. Wagner, *Reichshaushaltsordnung* (Berlin, 1924).

On the system of economic councils see Herman Finer, *Representative Government and a Parliament of Industry* (London, 1923); S. Moyetch, *Le parlement économique* (Paris, 1927); and C. W. Guilleband, *The Works Council: A German Experiment in Industrial Democracy* (Cambridge, 1927).

The new government of Prussia is dealt with in the treatises by Bornhak, Stier-Somlo, and the others mentioned on p. 641. There is a good survey in Blachly and Oatman (see *above*). On German municipal government the best work is Otto Most, *Die deutsche Stadt und ihre Verwaltung* (3 vols., Berlin, 1926). A useful small volume is B. W. Maxwell, *Contemporary Municipal Government of Germany* (Baltimore, 1928). Chapters on this topic are also included in William B. Munro, *The Government of European Cities* (revised edition, New York, 1927), with bibliographical references (pp. 419-422).

CHAPTER XXXIV

GERMAN POLITICAL PARTIES AND PROBLEMS

The German party system cannot be understood except by placing the parties within the general frame of German history.—*Bergsträsser*.

The new German constitution does not mention political parties. It does not even refer to them by implication. That is characteristic of modern constitutions. The men who make them are party leaders who know full well the important rôle which political parties play in the modern commonwealth. These men, indeed, are elected to the constitutional conventions as party candidates. Party rivalries come to the surface at every stage in the work of these conventions. Partysm colors the debates and is written all over the records. Yet when the finished document appears—whether in Germany, Poland, Ireland, or Hungary—one finds that all references to political parties and the party system have been completely expunged from it.

The constitution does not mention parties.

This, in general, is because lawmakers everywhere stand in bondage to legalism. The old theory of constitution-making is that the work should be done by men who represent the whole people and have no affiliation with any factional group. It was not until the nineteenth century that political parties became respectable. Prior to that time they were looked upon as disintegrators of patriotism, taking from people an allegiance which should be devoted to the state alone. Hence they were given no official recognition and had to make their way outside the ægis of constitutions and laws. To the mind of constitution makers, even in the twentieth century, that is where they still belong—outside the official frame of government. They are quasi-public organizations not entitled to recognition in the nation's fundamental law. So constitutions ignore them in their text, while nevertheless setting up machinery which would not function at all if political parties did not exist.

Reasons for this.

Of course this ignoring of political parties in written constitutions does them no harm. It does not diminish their number,

The omission has no effect on the rise of parties.

impair their strength, or lessen their influence upon the course of governmental policy. Parties develop in representative government because they are essential to its functioning. When a constitution, for example, establishes the principle of cabinet responsibility it makes partyism inevitable in the chamber to which this responsibility accrues. There will be those who support the cabinet and those who do not. Supporters and opponents will organize, both in the chamber and in the country. They will adopt programs and choose leaders. Then the governmental system will find itself endowed with two political parties, or three, or perhaps a dozen, depending on the traditions and circumstances.

German political parties before the war:

1. The Right.

In the German empire before the war there were six or seven political parties or party groups despite the fact that ministerial responsibility did not exist. As in the other countries of continental Europe they ranged from right to left, exemplifying all degrees of conservatism and radicalism. At the extreme right were the Agrarians and Conservatives. They drew their strength chiefly from the over-represented rural districts and were the most stalwart supporters of the old bureaucratic system. They did not have a large delegation in the Reichstag but their influence was usually greater than their numbers indicated, for they were solidly united and had a definite policy. Then came the Free Conservatives who had split off from their more reactionary brethren, and next to them the Center or clerical party which was brought into being as a result of Bismarck's controversy with the Catholic Church during the late seventies. When the iron chancellor found the hierarchy of the Catholic Church unwilling to do his bidding he started a policy of repression which rallied the Catholic voters to the defense of their church. The Center remained in existence after this controversy had come to an end, and in time it grew so strong that it occasionally held the balance of power in the old Reichstag. The main strength of this party lay in Bavaria, and in the other South-German states where the population is largely Catholic.

2. The Center.

3. The Left.

Further to the left were the National Liberals and the Progressives, both of which drew their chief strength from the middle classes of the population. Drawing from the middle classes they were both middle-of-the-road parties, opposing the Conservatives on the one hand and the Socialists on the other. They advocated a reapportionment of seats in the Reichstag, the establishment of

ministerial responsibility and the placing of a curb on Prussian militarism. The National Liberals, having the support of the great industries, were supporters of the protective tariff, while the Progressives leaned to free trade.

Then, there were the Social Democrats. This party had been founded in Bismarck's day but it did not gain much strength in the Reichstag until after 1890. Its program was Marxian in the sense that it demanded a wide extension of public ownership; but many political reforms were also advocated by the Social Democrats—including universal suffrage, the use of the initiative and referendum, proportional representation, and a redistribution of seats according to population, all of which have been carried through since the war. The Social Democrats drew most of their following from the workers in the manufacturing communities.

The Social Democrats.

Finally, there were some irreconcilables, that is, members of the old Reichstag who did not belong to any of the foregoing parties and were opposed to all of them. Among these were a group of Polish representatives from Posen, some members from Alsace-Lorraine, and a sprinkling of other anti-Germans from elsewhere. There were no out-and-out Communists in the Reichstag before the war, although the left wing of the Social Democrats was veering in that direction and split off entirely under the leadership of Liebknecht and Hasse before the war came to an end.

The sprinkling of irreconcilables.

These seven groups—Agrarian Conservatives, Free Conservatives, Center, National Liberals, Progressives, Social Democrats, and Irreconcilables—made up the fabric of the pre-war Reichstag. At the election of 1912 (the last election under the old constitution) the Social Democrats gained the largest single representation, with the Center a good second. The other parties had fewer than sixty members each.¹ In as much as no party controlled a third of the entire membership, the government was carried on by a bloc which included the Center and the middle parties, with some help from the Conservatives when needed. No avowed Social Demo-

Their relative strength.

¹ Here were the figures:

Agrarian Conservatives.....	45
Free Conservatives.....	13
Center.....	90
National Liberals.....	44
Progressives.....	41
Social Democrats.....	110
Irreconcilables.....	54

crat was ever admitted to an active share in the executive or administrative branches of the old German government.

The realignment of parties after the Revolution.

During the war period no general election was held. The Reichstag of 1912 prolonged its own existence until the armistice. Then, with the Revolution, it was deemed to have passed out of existence. Early in 1919 elections were held for the constitutional assembly, and in this campaign most of the old parties appeared under new names. The Conservatives came forth in new garb as the Nationalist party. The Free Conservatives and the moderate wing of the National Liberals effected a combination as the German People's party. The Center continued in existence but with a slight split in its ranks due to the organization of the Bavarian People's party, which is somewhat more conservative than the rest of the Center but usually works in alliance with it. The old Progressives, with the more radical National Liberals, became the German Democratic party. The Social Democrats continued to be known as such, and the Independent Socialists, who seceded from the major organization after the armistice, now became a factor in German politics. On the other hand the Poles and Alsatians were no longer troublers in the German family. Thus there were about the same number of political groups in the Weimar assembly as there were in the old Reichstag. The constitution, as has been said, was put through by a coalition of the middle groups, leaving out the Nationalists at the extreme right and the Independent Socialists at the extreme left.

Results of the first Reichstag election (1920).

But this coalition did not long hold together. In 1920 the first general election under the new constitution was held and the various groups resumed their freedom of action. At this election the Nationalists and the People's party made substantial gains at the expense of the Democrats. The Independent Socialists, having somewhat mollified their revolutionary program, cut into the ranks of the Social Democrats. The Communists also displayed some strength. In other words the extremists gained upon the moderates. But the Social Democrats remained the largest party in the Reichstag, with a delegation which numbered about a third of the whole. Successive ministries were formed during the next four years, each of them representing some bloc of the middle parties, but the various problems connected with reparations, taxation, inflation of the currency, and the French occupation of German territory proved beyond their power to solve. This shifting of

blocs and of ministries kept on until the spring of 1924 when the Reichstag was dissolved and a new election held.

It was made apparent, during this interval of four years, that the middle parties, especially the Social Democrats, were losing their hold on the country. The Nationalists, with some success, were endeavoring to rouse popular resentment against the foreign policy of the government, a policy which involved compliance with various demands of the Allied powers. The Communists, at the other extreme, sought to capitalize the disappointment of the wage-earning classes who had confidently hoped to get more out of the revolution than they were obtaining. The general expectation was that both of these extreme wings would gain heavily at the first election of 1924, and they did gain, but not so heavily as was anticipated. The middle parties retained control of a majority in the Reichstag but could no longer muster the two-thirds vote of that body which the constitution requires in certain contingencies. It therefore became necessary to dicker with the Nationalists for their support, and this was done. The various measures which became essential under the so-termed Dawes plan of financial rehabilitation were put through the Reichstag by means of Nationalist votes.

The first
election of
1924.

The May election of 1924 left the German political situation in a state of unstable equilibrium. The extremists were too strong to let the middle groups control. On the other hand they were not willing to help maintain a coalition except at a price which the Social Democrats were unwilling to pay. It soon became apparent, therefore, that another appeal to the country must take place, and in December, 1924, a new election was held. The result of this election did not help matters much, for although the extreme Right and the extreme Left both lost somewhat, it was not possible to form a middle coalition which could be certain of a majority in the Reichstag. Ostensibly the Center, Social Democrats, and Democrats included more than half the House; but some members of the first-named group were too conservative to be relied upon in any liberal bloc. For a time the country was left without a ministry altogether, and finally the Right was given a chance to show what it could do. Early in 1925 a ministry containing four Nationalists was installed after giving assurance that they would stand by the republic.

The second
election of
1924.

This ministry managed to accomplish a good deal as respects

The election of 1928.

the solution of foreign problems. It conducted the negotiations which led to the Locarno Pact and secured Germany's admission to the League of Nations. But these steps were resented by the Nationalists, who withdrew from the ministry and ultimately forced the rest of it to resign. Then a new ministry was constituted, once more from the middle parties, with both Nationalists and Social Democrats left out, but it lasted no longer than the others had done and in 1927 the Nationalists were once more taken into the cabinet. In the following year the time for a general election arrived and at this election the Social Democrats made considerable gains. It therefore became necessary to take a chancellor from the ranks of this party and he formed a ministry with the aid of the middle groups, thus creating what came to be known as the Grand Coalition because five parties were represented in the ministry according to their strength in the Reichstag. High hopes were entertained for the permanence of this coalition but they were not fulfilled. The cement was too weak and failed to hold.

The emergency dissolution of 1930.

The continued shifting of chancellors and ministries began to play havoc with the orderly evolution of governmental policy both in foreign and domestic affairs. In 1930 the situation came to a climax when the Reichstag refused to pass a measure which the chancellor regarded as essential to the financing of the government. He thereupon advised President Hindenburg to dissolve the Reichstag under his emergency powers and to order a new election, meanwhile retaining the chancellor and the ministers in office. This advice was followed and a general election was held in September, 1930.

And the subsequent election.

The outcome of this election did not seem to improve the situation. The two parties which made the largest gains were the extreme Nationalists (Fascists) and the Communists. The Center held its strength but the other groups, including the Social Democrats, were weakened. The Social Democrats remain, however, the largest single faction in the Reichstag.¹ The result of this election, therefore, has been to enhance the power of those parties which are opposed to the existing constitution and are dissatisfied with its workings. But their dissatisfaction arises from utterly

¹ The figures for the election of 1930 were: Social Democrats, 137; Extreme Nationalists (Fascists), 101; Communists, 75; Center, 64; Moderate Nationalists, 38; German People's party, 27; all others, 74.

different points of view and therein lies the chance that no radical alterations are likely to be made.

When one speaks of six or seven parties in German national politics it is well to point out that this is not the whole story. Each middle party has a right and left wing, in other words a conservative and a liberal faction within its own ranks, which means that each party shades over into its neighbors on either side. There are also a number of "splinter parties," as the small organizations are called. To nominate a district list of candidates for the Reichstag requires only 500 signatures and this has encouraged even the smallest factions to come into the field. At the election of 1928 there were more than thirty lists, taking the country as a whole, but many of these appeared in a single district only.

The "splinter parties."

The tendency of the German political parties is to become identified with particular economic interests. They tend to represent, not groups of political opinion, but class ambitions. They stand for interests rather than for principles. One need only read their respective programs to see this. In the United States the platforms of the two major parties are so framed as to make the strongest possible appeal to the whole electorate, irrespective of class or section. But in Germany there is no such attempt to synchronize party demands with the general welfare. The appeals are made, openly and vigorously, to the agricultural or industrial or commercial groups from which the party expects to draw most of its strength.

Politics and economics.

Along with its program goes the national list of each party, that is, the list of its candidates from which names will be taken when the surplus votes are pooled under the German system of proportional representation.¹ The make-up of this list discloses, even better than the program (Wahlvorschlag) what the party stands for. It is not because they are widely-known politicians that men get their names on these national lists. Very often it is because they represent some economic group which the party leaders feel bound to recognize. The concoction of these lists is a process like that of constructing a ministry. It requires great skill and diplomacy. One result of it is that the great industries and other economic interests have their representatives on the floor of the Reichstag and not in the lobby outside.

Programs and lists.

¹ For an explanation, see pp. 631-633.

Party or-
ganization:

The na-
tional con-
ventions
and com-
mittees.

State con-
ventions
and com-
mittees.

Partisan
regularity.

The type of organization used by the political parties in the German Reich is not widely different from that with which we have become familiar in the United States. Each party has its national convention made up of delegates from the thirty-five districts. Each district sends a quota of delegates in proportion to its party strength. The national convention frames the party program and usually elects the members of the national executive committee including the chairman of this body. The executive committee attends to the details of party management and is the real directing force. It is assisted by an advisory council made up of one or more representatives from each of the thirty-five election districts. This council does not meet at stated times but comes together whenever the executive committee summons it. Each party also has its national headquarters in Berlin and is provided with a permanent staff.¹

As in the United States, moreover, there are state and local organizations for each party. There are state conventions and state executive committees. Each election district also has its convention and its committee. Most of the parties also have similar apparatus for each city or town within the district. The foregoing should not be taken to imply, however, that all the German political parties carry through this elaborate organization from top to bottom. Each party has its weak and its strong spots. In some districts a party will have no organization at all, or almost none. The Social Democrats are an exception to this: they are strongly organized everywhere, with thirty-five district headquarters which function the year round.

One important difference between German and American methods of party organization ought to be mentioned. In the United States the party leaders cannot regularly control the nomination of senators or congressmen. A candidate may go into the Republican or Democratic primary and gain the party nomination despite the opposition of the regular leaders. Indeed he may get the nomination without really being a member of the party whose standard he is selected to carry in the election campaign. Repeatedly this has happened in the United States, hence the considerable number of insurgents in Congress. In Germany this

¹ For a further discussion see the article on "The German Party System" by James K. Pollock, Jr., in the *American Political Science Review*, Vol. XXIII, pp. 859-891 (November, 1929).

could not happen. No one can become a party candidate without getting on the party list, and to do this he must be a member in thoroughly good standing. Each political party is permitted by law to determine how its own lists shall be made up and they have all settled the procedure in much the same way. In the districts the preliminary list of each party is made up by the district executive committee and submitted to a convention of delegates. It is usually ratified without change. The national lists are framed by the national executive committees and are not customarily submitted to a convention for approval. No mongrel or mugwump can make his way upon either of these lists. To get his name there his allegiance to the party must be beyond question. This arrangement is what gives basis for the frequent allegation that the German electoral law has set up a "dictatorship by party machines."¹ Certainly the control of candidacies, and of the actions of candidates after they are elected, is more securely lodged with the party leaders in Germany than in America.

There are other differences. American party organization is run at top speed during the months which precede an election; then its wheels virtually stop moving until the next campaign approaches. This is because American elections come on dates which are definitely fixed and hence are known far in advance. But in Germany the Reichstag may be dissolved at any time, without a moment's notice, and an election comes within a few weeks thereafter. Four years may pass without an election, as happened from 1924 to 1928; but two elections may be held within a few months as was the case in the first-named year. In July, 1930, the Reichstag was suddenly dissolved when its term had still two more years to run, and a general election followed in September. Because of this uncertainty the German party organizations must keep themselves with steam up at all times. Their headquarters are kept busy, with no long vacations. To maintain full-time organizations of this sort requires a good deal of money, which is collected from various sources as in America, although a large proportion of it comes from individual membership dues. This is particularly true of the Social Democrats who get most of their party funds in that way.

The press in Germany, as in the other countries of continental Europe, is a political factor of great importance. Most of the lead-

Other contrasts with the American party system.

Parties and the press.

¹ For example see Oswald Spengler's notable volume on *The Decline of the West*, Vol. II, p. 573.

ing German newspapers are frankly and unrelentingly partisan. A few profess independence but virtually none of them live up to this profession. Large numbers of journals are literally owned by the party organizations. The Social Democratic party, for example, owns and publishes nearly two hundred newspapers in all parts of the Reich. Other parties are by no means so well endowed with agencies of propaganda, although the moderate Nationalists have the unswerving and powerful support of the Hugenberg chain which controls numerous motion picture houses as well. The German Democrats do not own but they have the steady coöperation of several great newspapers whose circulation covers a large part of the country.¹ For the Communists there is *Die Rote Fahne* which makes up in virulence for whatever it may lack in news service or journalistic quality. Newspaper editors and owners in Germany, as in France, are prominent among the party leaders and figure plentifully among the candidates for public office.

The modernization of the German party organizations.

In general the change that has been wrought in the German party system during the past ten years is stupendous. One might expect the Germans to be good organizers but before the war the various political groups, with the exception of the Social Democrats, were loosely held together and poorly disciplined. To-day they have become "thoroughly Americanized," as one German writer expresses it. Organization has been improved and party discipline tightened up until the various German parties are now as well integrated as anywhere else in the world. Many thoughtful Germans deplore this development, but the party leaders who have secured their new power through organization are not likely to give it up. Some also regret the multiple party system and argue that there is need for only two organizations, the Right and the Left; but the Center stands between the two and draws its membership from both, hence it is not likely to participate in any scheme of party mergers. The indications are that Germany will continue to have several parties no matter what trend her government may take.²

¹ The *Frankfurter Zeitung*, *Vossische Zeitung*, and the *Berliner Morgenpost* for example. *Vorwärts* is the outstanding organ of the Social Democrats. The *Berliner Lokalanzeiger* is the organ of the German People's party and the *Deutsche Allgemeine Zeitung* tends to favor that party also. *Germania* is the organ of the Center, but the *Koelnische Zeitung* is Centrist also. The *Deutsch Zeitung* is extreme Nationalist and so is the *Kreuz-Zeitung*.

² A full discussion may be found in the article on "The German Party System" by James K. Pollock, Jr., in the *American Political Science Review*, Vol. XXIII, pp. 859-891 (November, 1929).

POST-WAR PROBLEMS

The great problem in German politics during the past decade has been to liquidate the various legacies of the war. First came the task of stabilizing the currency. Before the outbreak of the war the total currency in circulation was about seven billion marks of which less than half was in paper notes. By the close of the war the total had risen to nearly twenty billions, with virtually all of it in notes. This inflation brought the mark down to half its par value, reckoned in American dollars, by the close of 1918. But the extreme depreciation of the German currency came during the next five years and was due to the action of the government in attempting to make its budget balance by the issue of more paper money. Month by month, as this futile process went on, the mark slipped down. In the summer of 1921 it was worth less than two cents; in 1922 it took 4500 marks to buy a dollar; and in 1923 it required a million marks to buy an American postage stamp.

The decline
of the old
mark.

At this stage a new standard of values and medium of exchange known as the rentenmark (based upon hypothecated property) was devised, and the rentenmarks were subsequently replaced by new gold marks, or notes which were assertedly redeemable in gold. These now form the backbone of the German currency. Meanwhile, however, the entire deposited savings of the people disappeared with the collapse of the old mark, for government bonds, mortgages, and other obligations ceased to have any substantial value, while industrial securities were liquidated for next to nothing. Thus the whole middle class was stripped of its resources. The episode afforded a highly instructive lesson with respect to the economic chaos and ultimate injustice which unrestrained inflation can produce.

The new
currency.

During these same years the German government had to wrestle with the problem of reparations. In the Treaty of Versailles the victorious Allies required Germany to acknowledge responsibility for the war and to assume liability for paying reparations. This Germany did because she had no other alternative. The famous Article 231 of the Treaty, which relates to this responsibility, is as follows:

Repara-
tions.

"The Allied and Associated governments affirm, and Germany accepts, the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated governments and

their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies."

Occupation
of the Ruhr.

But the amount of these reparations was not fixed in the treaty; it was left to be fixed by a special reparations commission. After various proposals and counterproposals this commission, in 1921, fixed the total at thirty-three billion dollars, to be paid in annual installments over a long term of years. Germany accepted this stipulation under vigorous protest, but in the midst of her own currency disorganization soon became unable to make the large annual payments as provided. The German government first asked for a moratorium and then defaulted altogether, whereupon the French and Belgium forces took possession of the Ruhr, a rich coal region, as security. This region constitutes the industrial heart of Germany and its occupation by foreign troops greatly accentuated her economic difficulties.

The Dawes
plan.

Accordingly the German government now proposed that an impartial international commission should be appointed to investigate Germany's capacity to pay reparations and expressed a willingness to resume payment on this basis. In response to this proposal a body known as the Dawes Committee was appointed, consisting of two representatives each from the United States, Great Britain, France, Italy, and Belgium under the chairmanship of General Charles G. Dawes, who later became Vice President of the United States. This committee prepared in 1924 the Dawes plan whereby Germany was to pay annual installments on a graduated scale, the money to be derived from certain sources designated in the plan, and the installments to be transferred to the creditor countries under an arrangement which would prevent undue disturbance with the rate of exchange. This plan was adopted by all concerned, the Ruhr was evacuated, and during the next four years Germany made her payments in accordance with it.

The Young
plan.

But the Dawes plan did not fix the total of Germany's obligations. It merely determined what Germany could pay annually over a period of years and said nothing about how long she should continue paying. This problem necessitated, in due course, the appointment of another committee of experts which met in 1929 and was known as the Young Committee, its chairman being Owen D. Young, who had served in the making of the Dawes plan. The Young Committee prepared and reported a revised schedule of payments extending over fifty-nine years. It also provided for the

establishment of a Bank for International Settlements with the function of facilitating the transfer of these annual payments and serving as a stabilizing factor in international exchange. In due course the Young plan was accepted with some modifications and put into effect. Thereupon the last tract of German territory occupied by the French was evacuated. The International Bank has been established, under international management, and is functioning. The annual payments now being made by Germany amount to about half a billion dollars. Whether the Reich can, or will, continue these large payments to the end of the term is something that no sensible man would venture to predict because it is not merely a matter of economics but of politics also.

Germany was not admitted to membership in the League of Nations at the time of its formation, but provision was made for later admission by a two-thirds vote of the League assembly. In 1925 the German government suggested that the four major powers should enter into a British-French-Italian-German agreement for the avoidance of war, this to be based upon the recognition of existing territorial ownership and conditioned upon Germany's fulfilment of her treaty obligations. As an outcome of this suggestion a conference was held at Locarno in Switzerland with delegates present from the four major countries and from Belgium, Poland, and Czechoslovakia as well. At this conference various arbitration treaties were negotiated, as well as a Treaty of Mutual Guarantee. By the terms of this latter agreement, commonly known as the Locarno Pact, the inviolability of the existing frontiers between Germany, Belgium, and France were guaranteed by the three countries concerned, as well as by Great Britain and Italy. In case of a doubtful violation the issue was to be referred to the Council of the League of Nations.

Germany
and the
League of
Nations.

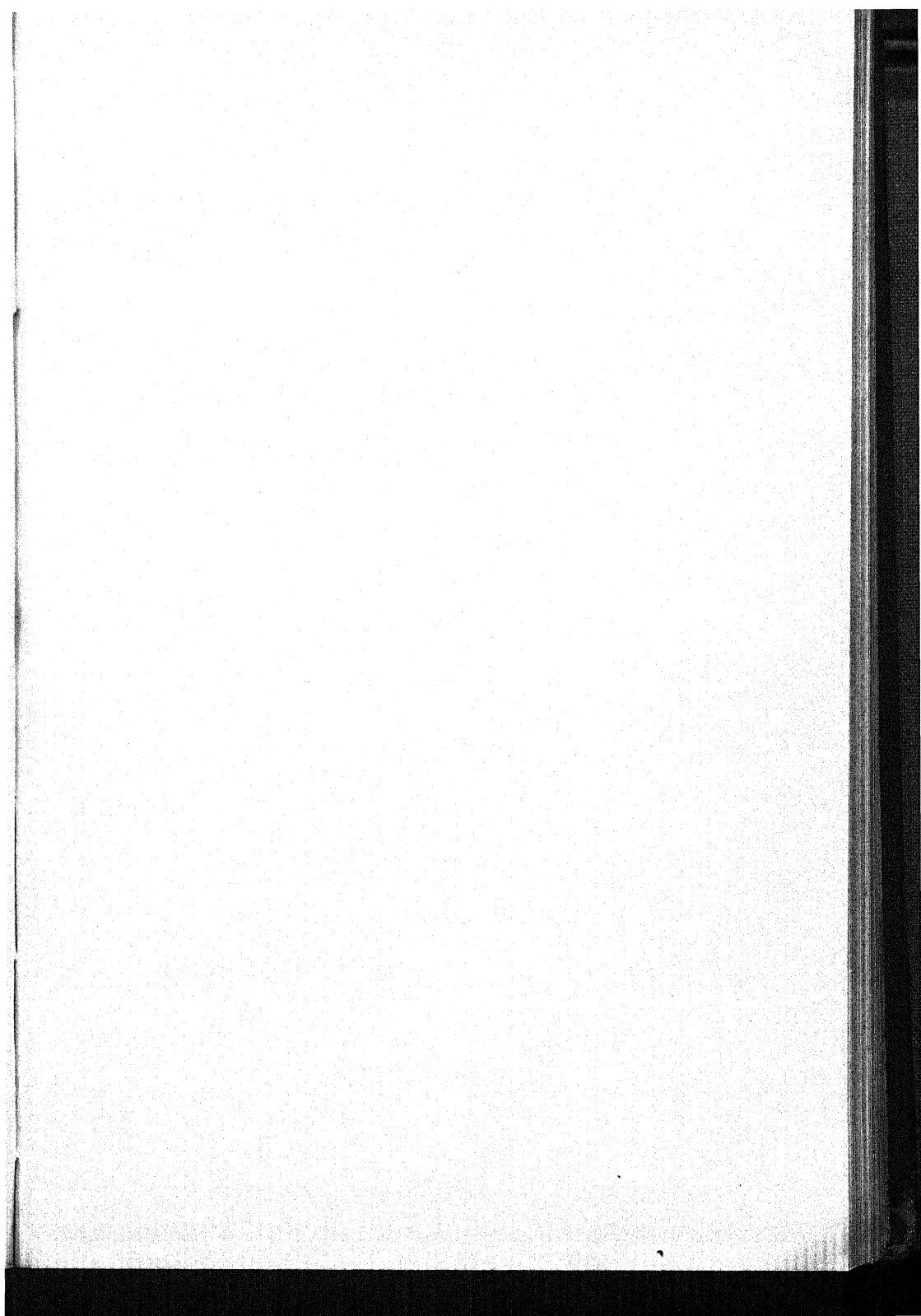
Locarno.

This provision made it highly desirable that Germany should be admitted to membership in the League, with a permanent seat on the Council, and informal assurances to that end were given. In September, 1926, these promises were fulfilled. Germany became a member of the League of Nations on the same status with France and Great Britain. Shortly thereafter the various interallied commissions of control which had been functioning in Germany since the war were abolished and their duties transferred to the League. Then with the acceptance of the Young plan the French troops remaining in the German Rhineland were withdrawn.

Many books have been written about German politics and problems since the war. On political parties the best book is L. Bergsträsser, *Geschichte der politischen Parteien in Deutschland* (5th edition, Berlin, 1928). Reference may also be made to F. Saloman, *Die deutschen Parteiprogramme* (4th edition, 3 vols., Berlin, 1926); Ernst Jäckh, *The New Germany* (London, 1927); H. G. Daniels, *The Rise of the German Republic* (London, 1927); and the article by James K. Pollock, Jr., on "The German Party System" in the *American Political Science Review*, Vol. XXIII, pp. 859-891 (November, 1929).

On German financial problems and the reparations issue see Gustav Cassel, *Des Geldwesen nach 1914* (Leipsic, 1925); Hjalmar Schacht, *Die Stabilisierung der Mark* (Stuttgart, 1927); R. K. Michels, *Cartels, Combines and Trusts in Post-War Germany* (London, 1928); P. P. Reinhold, *The Economic, Financial and Political State of Germany since the War* (New York, 1928); H. Quigley and R. T. Clark, *Republican Germany* (London, 1928), especially chaps. xi-xii, Max Sering, *Germany under the Dawes Plan* (New York, 1928); G. P. Auld, *The Dawes Plan* (New York, 1928); C. Bergmann, *The History of Reparations* (London, 1926); M. Pernot, *L'Allemagne aujourd'hui* (Paris, 1927); H. G. Moulton and C. E. McGuire, *Germany's Capacity to Pay* (New York, 1923); and F. Lee Benns, *Europe since 1914* (New York, 1930); especially chap. x, with bibliography.

On German foreign relations during the past ten years the most useful books are Count Harry Kessler, *Germany and Europe* (New York, 1923); F. W. Foerster, *Franco-American Reconciliation* (London, 1923); J. W. Wheeler-Bennett and F. E. Langermann, *The Problem of Security* (London, 1927); and Maximilian Harden, *Germany, France and England* (London, 1924).





CHAPTER XXXV

ITALY AND THE FASCIST REVOLUTION

The relations between the state and the individual are completely reversed by the fascist doctrine. Instead of the old democratic formula "society for the individual," we have the new formula "individuals for society."—*Alfredo Rocco*.

Buttressed on the north by the Alps, and ribbed throughout its course by the Apennines, the kingdom of Italy thrusts itself into the Mediterranean. No country in Europe has had a longer and more interesting political history. It contains two regions which differ widely in their physical characteristics, namely, the northern or continental region which includes Lombardy, Piedmont, Tuscany, and Venetia, and the southern or peninsular division, which comprises not only Rome and its adjacent territories, but the old kingdom of Naples and the islands of Sardinia and Sicily. The entire kingdom comprises about 90,000 square miles, which is slightly more than the area of Kansas. But the population of Italy exceeds 41,000,000, which is more than that of all the American states west of the Mississippi.

The kingdom of Italy.

The earliest history of this peninsula is known only through the classic legends. It was then inhabited by a variety of tribes. At some time prior to 700 B. C. came the founding of Rome and in due course the sway of this city was extended in all directions until it eventually spread over most of the then-known world. Thus Italy became and for several centuries remained a world empire, the center of world culture and civilization. All roads led to the Eternal City, a proud metropolis with a population of over a million.

Its early history.

Then ensued a long period of decline in Roman power and its ultimate collapse in the fifth Christian century. The barbarians from the north came down into Italy, overran it, sacked its cities, wrecked its government, and turned the land into a desolation. Next followed the periods of Gothic, Byzantine, Lombard, and Carolingian domination—each with its own vicissitudes. Much could be written on the history of this lurid interval of five cen-

turies from 500 to 1000 A. D., but it would not be appropriate here. It is enough to say that banditry and disorder too often got the upper hand in spite of all that either the civil or ecclesiastical authorities could do.

Italy in the
later middle
ages and
early mod-
ern period.

With the beginning of the eleventh century some signs of a revival appeared. The cities, particularly in the northern part of the peninsula, began once more to grow and flourish. Princes and dukes, as well as communes and republics, were able to stabilize their power in a host of small states and to maintain a semblance of discipline although they were frequently at war with one another. By the close of the middle ages the time had become ripe for the welding of these jarring areas into a unified nation; but unhappily no unification was achieved. On the contrary this civil warfare paved the way for an era of foreign domination which proved to be long continued. England and France attained the goal of unity; Italy did not. She remained a geographical expression down to the end of the nineteenth century. Local jealousies, regionalism, foreign control, and a lack of national consciousness all contributed to make it so.

The genesis
of unifica-
tion.

The work of
Napoleon.

The beginnings of progress toward the unification of Italy date from the years 1796-1799 when Napoleon Bonaparte invaded the land with his ever-victorious armies and brought the whole territory under his control. Thereupon, in true Napoleonic fashion, he combined many of the small states into a Cisalpine Republic, and finally united the entire peninsula under French tutelage. To all of it he extended the Code Napoléon and the French administrative system. In this way he stamped upon Italian political and legal institutions an impress which they bear to this day. But this unification of Italy proved to be brief for it went to pieces when the Napoleonic empire collapsed. Nevertheless it gave the Italian people a new vision and revived among them their old consciousness of a common nationality. Thus it was the rise of a Bonaparte that first created among the Italians, as among the Germans, a determination to be united under a government of their own. And, curiously enough, it was the fall of another Bonaparte (1870) that in both cases enabled this unification to be consummated.

Italy after
Napoleon's
fall.

In 1814-1815 the Congress of Vienna met to realign the boundaries of Europe which the long wars had so rudely disturbed. One of the most difficult questions confronting the Congress was what to do with Italy,—and, as it happened, Italy had no friends at this

Congress. Austria, for her own advantage and security, desired that Italy should remain disunited and weak. It was likewise Austria's ambition to dominate all the Italian states which lay within reach of her own frontier. So Italy was once more dismembered. Austria recovered Venetia and the duchy of Milan. Parma, Modena, Tuscany, Naples, and various other states were placed under foreign rulers. The Pope was confirmed in his possession of Rome and the papal states. The kingdom of Sardinia, including Savoy and Piedmont (with the addition of Genoa), was the only one left with an Italian dynasty. Thus Italy became once again a land of shreds and patches, as it had been before the Bonapartist invasions.

But the Congress of Vienna, although it rearranged boundaries, could not stifle the sentiment for unity and independence which had been aroused among the people. Bonaparte, after his exile to St. Helena, was enough of a statesman to foresee that no fiat of a world-congress would suffice to keep the various states of Italy from gravitating together. "Italy's unity of language, customs and literature," he wrote, "must sooner or later bring all her inhabitants under one government." This prediction was ultimately fulfilled, although its fulfilment was long delayed. The nationalist sentiment attained its earliest strength in the kingdom of Sardinia which, as has been said, included Piedmont and Savoy on the mainland.

The movement for Italian unity led by Sardinia.

But no plan of union could hope to be successful unless it were based upon liberalism—and there was no political liberalism in any part of Italy during the first half of the nineteenth century. Even the kingdom of Sardinia-Piedmont and Savoy was without a constitution. It was not until 1848 that its king, Charles Albert, granted his people a charter of political liberties known as the *Statuto fondamentale*. This act of liberalism enraged the Austrians and led to a war which cost Charles Albert his throne, but his son and successor refused to abrogate the constitution of 1848 although strong pressure was placed upon him to do so.¹

The Statute of 1848.

With Sardinia-Piedmont under a constitutional monarch the way was cleared for the beginnings of unity. And for the next twenty years the rise of Italy to nationhood is the story of this one

Cavour's ambition.

¹ Constitutions were also granted in some of the other states, notably in the kingdom of Naples; but everywhere except in Sardinia-Piedmont they were revoked during the years following 1848.

state's expansion over all the rest. In its earlier stages the movement had a capable and far-sighted leader, Count Cavour, who became prime minister of Sardinia-Piedmont in 1852. He was an ardent nationalist and had in mind for Italy exactly the same goal that Bismarck sought for Germany ten years later. Like Bismarck, too, he was convinced that no scheme of Italian unity would be permitted by Austria. Austria, therefore, must first be dealt with on the battlefield and ousted from all share in Italian affairs. But Austria was a great military power in these days, and it would have been suicidal for Sardinia-Piedmont to make war on the Hapsburg empire unaided and alone.

His diplomacy and wars (1855-1859).

So Cavour proceeded to seek allies among the other European powers. In 1855 he joined England and France in their joint (Crimean) war against Russia—not because Sardinia had any direct interest in the question at issue, but because Cavour desired to put France under moral obligations to his own country. By this and other well-timed diplomatic manœuvres he finally drew France into a definite agreement by which Napoleon III undertook to combine with him in driving Austria from Italian soil. Together the two allies assailed Austria in 1859, and won victories at Magenta and Solferino; but before the Austrians had been completely dislodged Napoleon III weakened and decided to conclude a peace by which only half the bargain was fulfilled. Lombardy was taken from Austria and joined with Sardinia-Piedmont, but the Austrians were permitted to keep Venetia.¹

Garibaldi and the annexations.

This *démarche* on the part of the French was a great disappointment to Cavour and to all the partisans of Italian unification; but it did not bring the nationalist movement to an end. On the contrary it gave new virility to the cause which now aimed at nothing short of a kingdom unified from tip to toe, with Victor Emmanuel, the king of Sardinia-Piedmont-Lombardy, as monarch of all Italy. Notable progress in this direction was made when various small states (Parma, Modena, and Tuscany) presently ousted their foreign rulers and declared for annexation. Under the leadership of Garibaldi both Naples and Sicily revolted in 1860, expelled the Bourbon dynasty, and voted likewise. In this way the program of unification made headway until it was virtually complete with the exception of Venetia (which Austria retained), and Rome, with the

¹ In return for French assistance Sardinia-Piedmont was required to hand over Nice and Savoy to France.

adjacent papal state much reduced in size, which were still under the rule of the Vatican.

Cavour did not live to see the completion of his work, which was delayed for another decade by reason of various obstacles. Austria could not be ousted from Venetia by the armies of Italy alone; it was necessary to wait until the Austrians were in trouble elsewhere. This opportunity arrived in 1866 and the Italians seized it without hesitation. While the Prussians were overwhelming Austria at Sadowa, the Italian armies went into Venetia and "redeemed" this portion of their homeland. They would have annexed Rome and the papal states also, had it not been for the intervention of Napoleon III who now reappeared in Italian politics, this time as the protector of the Pope's temporal rulership. From 1866 to 1870 a small French army guarded Rome against the Italians, but in the latter year it was withdrawn for service in the Franco-Prussian war and the Italians were promptly on the heels of the evacuation. The Italian capital was thereupon transferred from Florence to Rome. The temporal power of the Papacy came to an end for more than fifty years, only to be reestablished in a modified form by a new agreement which was concluded between the Vatican and the Italian government in 1929. Meanwhile the relations between the two were sought to be regulated by a Law of the Papal Guarantees which the Italian parliament enacted in 1871 but which the Papacy never recognized.¹

The completion of unity in 1866-1870.

There are some interesting similarities between the unification of Italy and that of Germany. In both cases Austria was the chief barrier to the goal. In both instances the nationalist leadership was provided by one vigorous state, by Sardinia-Piedmont in one case, by Prussia in the other. There was a four-year delay in both countries by reason of French intervention, and the overthrow of Napoleon III brought the final culmination of unity in both. Bismarck lived to see the crowning of his work, while Cavour did not. The two newly-unified countries became allies and remained so for many years, but in the world war the alliance parted.

A striking historical analogy.

The expansion of Sardinia-Piedmont into the kingdom of Italy did not involve the framing of a new constitution. The Statuto of 1848 was merely extended, stage by stage, to the annexed territories. Ostensibly this constitution still remains in effect, although

The present constitution of Italy.

¹ For a discussion of the Roman question, including the Law of the Guarantees and the Concordat of 1929, see *below*, pp. 717-721.

it has been amended out of all recognition during recent years by the Fascist government of Italy. The process of amendment is so simple that this has not proved difficult. When the Statuto of 1848 was proclaimed it contained no provision for amendment. This silence was forthwith construed to mean that it could be amended at any time by merely passing an amending law. The leaders of the government and the courts have accepted and acted upon this understanding, namely, that the written constitution of Italy, like the unwritten constitution of Great Britain, can be changed by an act of parliament.

How
amend-
ments have
been made.

For more than sixty years, however, amendments were relatively infrequent despite the ease with which they could be made. Both parliamentarians and the people went on the principle that the provisions of the Statuto should not be radically changed unless for some urgent reason. Accordingly there developed a general tradition that the Italian parliament would not pass any law in conflict with the constitution, and hence amending its provisions, until after the issue had been threshed out in an election campaign and virtually decided by popular vote. The Statuto of 1848 was a very short document, and general in its terms, hence a great deal of detail was left to be filled in by laws, decrees, and usages. With the expansion of the kingdom and the increased complexity of its government this constitution was naturally much elaborated, but its essential features underwent no great change from 1848 to 1922. It gave Italy a political system that seemed at times to be sadly lacking in executive stability, but there was no serious demand for a thorough overhauling of the fundamental law until after the close of the world war.

Mussolini
and the new
order.

With the advent of Benito Mussolini to power in 1922, however, all this began to undergo rapid and drastic changes. The old ministerial instability disappeared. One dominant political party, the Fascist party, went into power and stayed there. Many essential features of the old constitution were cast off, one after another, until the government of Italy to-day bears hardly a faint resemblance to its prototype before the world war. The Italian political revolution of the past ten years has been extensive. It has retained the monarchical form of government but has transformed the basis of parliamentary representation, the system of law-making, the structure of local administration, the relations of church and state, the party system, and to some extent the ad-

ministration of justice. The Italian government of to-day rests upon a new political philosophy.

In the case of most governments it is customary to outline the political framework first and the party system afterwards. This is because party organization adapts itself to the mechanism of government. But in the case of Italy the order has to be reversed, for there the frame of government has been adapted to the exigencies of the party system. Fascism is the pivotal fact in contemporary Italian government. It is therefore essential, before discussing monarchs, ministers, or parliaments, to explain what Fascism is, how it came upon the scene, and what it has done to the Italian constitution. This, in turn, necessitates a survey of Italian political development before, during, and immediately after the great war of the nations.

Fascism the basis of the new state.

Modern Italian politics began with the Statuto, although that document contains no hint that political parties would have any share in the government. Cavour, who became prime minister in 1852, was not a strong party man. He was a liberal with conservative inclinations. During the period of his premiership (1852-1861) Cavour built up a great body of political followers. They were not held together by party ties but by personal devotion to him and by their zeal for the unification of Italy. The great statesman's death in June, 1861, shattered one of those bonds, and with the final occupation of Rome in 1870 the other went also. Thereupon the country divided into two camps commonly known as the Right (Conservatives) and the Left (Liberals). The former drew their chief strength from the north, the latter from the south. The Right managed to secure the lion's share of the credit which went with the achievement of Italian unity and for some years after 1870 was able to dominate the Chamber. But its rule was too reactionary to suit the masses of the people and in 1876 it was replaced by the Left which was able to hold the reins of power, without interruption, for twenty years.

Party politics and politicians before the war.

During this period there were several prime ministers, for both the Right and the Left proceeded to become split into smaller groups, and although the groups forming the Left were consistently the stronger they could not stay united behind a single ministry for any considerable length of time. The most notable of Italy's prime ministers during the earlier portion of this period was Depretis, a shrewd political manipulator who always managed to

Crispi and Depretis.

get himself counted among the winners after each ministerial crisis. He was not a great statesman in any sense of the term. During the later years of the nineteenth century, especially during the era 1891-1896, the outstanding figure in Italian politics was Francesco Crispi, a leader of great vigor and capacity, who unhappily ran into difficulties which were not altogether of his own making. An Italian military expedition against Abyssinia met with a serious defeat and Crispi became the scapegoat. With his departure from office the parties of the Left surrendered, for the moment, their long lease of power.

Giolitti, the opportunist.

The Right came back to office in 1896, after its long rest in the shades of opposition, but it did not remain in office very long. It could not hold a majority of the Chamber together. There seemed to be no place in Italian politics for an avowedly conservative *blocchi*—as a coalition is called in the land of the Cæsars. So ministries were formed, defeated, re-formed, and defeated again. This process continued in tedious reiteration year after year. Italy rivalled France in her flittings of cabinets in and out. Only one Italian statesman managed to keep himself consistently to the forefront during these troublesome times. This was Giovanni Giolitti, foremost among the leaders of the Left, an opportunist if ever there was one, and a politician of marvelous dexterity in the making of coalitions. Although it is often said that he never deigned to face any great national problem in a statesmanlike way, nevertheless much of Italy's early social legislation was enacted under his leadership or with his support. At various times Giolitti had to meet not only the opposition of the conservative groups but that of the Socialists as well, for he declined to go so far as the latter desired. That he was able to do so much is a tribute to his skill in the handling of politicians. He professed democratic sentiments, but did not have any fixed political principles and was ready to favor any party provided that by so doing he could carry on a little longer. Yet he was marvelously successful in politics. Giolitti held the post of prime minister during a considerable part of the period 1900-1915, and when not in power he was usually close to the edge of it.

Rise of the Socialists.

Meanwhile a socialist party had been coming to the front as in the other countries of continental Europe. In due course the Socialists formulated a definite program, with demands for universal suffrage, reduction of armaments, tariff reduction, welfare

legislation, and social insurance. By reason of this program, together with the relative impotence of the older parties, the Socialists made steady gains during the first decade of the twentieth century and eventually controlled a substantial group in the lower chamber of the Italian parliament.

At this juncture (1916) came Italy's entrance into the world war. The Socialists, for the most part, were opposed to this step, but the government could not withstand the allurements and compensations which were held out to Italy in the event of an Allied victory. She was to have large territorial acquisitions, chiefly at the expense of Austria-Hungary. Italy's part in the war, however, proved to be extremely burdensome to the national treasury, and the operations of the Italian army were by no means so successful as had been expected.

Italy in the war.

During the war period the Italian Socialists gave an unenthusiastic support to the government, as in other countries, and took no unfair advantage of the national emergency, although some extremists among them were believed at one time to be tampering with the morale of the army. A serious Italian reverse at the Piave was thought to have been caused by their pacifist propaganda. At any rate when the war was over the Socialist party emerged with a more radical program, and some of them, fired by the success of the revolutions in Russia and in Germany, became avowed communists. At the Socialist Congress of 1919 the party officially adopted a program of a maximalist or communist character and declared its allegiance to the Third (Moscow) Internationale. This program demanded the abolition of the capitalistic system and called for the introduction of soviet rule. Under normal conditions a proposal so drastic would not have made a strong appeal to the Italian people, but conditions were chaotic and the non-Socialist parties were unable to offer a united opposition or to agree on a common program.

The Socialists swing to the Left.

The whole country, moreover, was in a disillusioned and resentful mood because Italy seemed to have profited so little from the war. The masses of the people had been led to expect large accessions of territory at the close of the conflict, and the modest awards made to Italy by the Peace Conference were a profound disappointment. There was a general expectation that Italy would get the port of Fiume and the Dalmatian coast, together with the control of Albania, thus turning the Adriatic into an Italian lake.

The national disillusionment.

Many Italians also looked for the acquisition of territories in the Near East at the expense of Turkey, and in Africa at the expense of Germany. But these high hopes were not realized and the popular wrath recoiled on those who had taken the country into the war. To make matters worse the government had huge annual deficits in these immediate post-war years; the currency depreciated; the cost of living went up; and there was much unemployment.

The rapid
drift toward
chaos.

The Socialists profited from this widespread disillusionment and discontent. They now had a group in the Chamber of Deputies large enough to force concessions from the ministry, and they used this power to the full. Strikes and disorders became more numerous and more serious; but the hand of the government seemed paralyzed. The Socialists, with their Marxian program, were not strong enough to rule Italy themselves; but they had enough power to prevent anyone else from doing it effectively. With a divided and vacillating ministry at the helm the economic situation became steadily worse during 1920. Agrarian disorders resulted from the seizure of land by peasants in the southern part of the country. Workers began to seize factories and to organize them on the Russian plan. Soviet agents urged the movement on. For a time it looked as though Italy was on the verge of becoming a dictatorship of the proletariat; but the more moderate element in the Socialist party held back and the opportunity was lost.

Fascism
comes to the
rescue.

It was not until after the danger of revolution had passed that fascism stepped into the breach. The origin of the Fascisti goes back to the early days of the war when Italy was still a neutral. At that time organizations were formed for the purpose of urging the country into the war on the side of England, France, and Russia—*fasci interventisti*, they were called. They were not anti-Socialist except in so far as they blamed the Socialists, among others, for keeping Italy out of the war. And when Italy joined the Allies in 1915 the reason for their existence disappeared. After the armistice, however, they were reorganized under a new name, *fasci di combattimento*, with Benito Mussolini at their head.

Mussolini:
his early
career.

This remarkable man was born in 1883, the son of a village blacksmith. He became a school teacher but drifted into journalism and in 1912 became editor of *Avanti*, the official organ of the Italian Socialist party. As such he was a revolutionary Socialist. After the world war broke out, however, Mussolini began to ad-

vocate Italian intervention on the side of the Allies. For this the Socialists dismissed him from his editorship. Thereupon he moved away from his old associates although not from their program. When Italy entered the war he enrolled in the ranks and served until he was wounded.

After the war was over, Mussolini issued a call for ex-service men to join the Union of Combat (*fasci di combattimento*) with the idea of creating an organization strong enough to help in the solution of Italy's post-war problems. Many of them responded, and when disorder became widespread in 1920 large numbers of conservative Italians flocked into the Fascist membership also. From a revolutionary Socialist, Mussolini became leader of the reactionaries. Branches of the organization were established all over the country. Groups of younger Fascisti, clad in black shirts, sallied forth to stem the rising tide of communism. Meanwhile the Giolitti government sat inactive, letting the two sides fight it out in the streets, which they did with a good many casualties.

His organization of the black shirts.

Fascism got the better of this guerilla civil warfare. The split in the Socialist ranks, the weakness of the government, the desire of the people for a restoration of law and order, the financing of the cause by industrial corporations,—these factors contributed to its success. The organization presently became the Fascist party with a new platform into which a strong dose of conservatism had been injected. Those who had joined it to put down communism now continued their support in order to see the work of reconstruction completed. Feeling himself strong enough to issue an ultimatum to the government, Mussolini in 1922 demanded that a new ministry with Fascist representation be placed in power or a general election held. While the government was trying to make up its mind, the call went forth for a Fascist march on Rome. From all corners of the kingdom, in response to Mussolini's summons, the black shirts converged upon the Eternal City and demanded that governmental authority be surrendered into their hands.

The ultimatum to the government and the march on Rome.

The ministry capitulated. Mussolini was installed as prime minister with a coalition cabinet of his own choosing. Then he warned the Chamber of Deputies that if it did not support the new administration it would be dissolved. The Chamber hastened to do as it was bidden. It gave assent to the measures laid before it, notably to the electoral law of 1923. For the first time in fifty years

Mussolini becomes prime minister.

Italy was under the rule of a prime minister who (for the moment) did not have to placate any element among the deputies. Then ensued the steady fascistization of the whole government. With a stern hand Mussolini proceeded to cut down governmental expenses and to make the budget balance. He dismissed superfluous public officials in large numbers. He went on the principle that none but Fascists were entitled to any place on the public pay roll. Nor did Mussolini scruple to crush opposition and to stifle criticism wherever they showed themselves. He used the power of the government to curb the opposition press and to silence what was left of communist leadership.

The new
electoral
law (1923).

Then Mussolini proceeded to secure a Chamber of Deputies that could be counted upon to give no trouble at critical moments. Under the provisions of the new electoral law (1923) it was arranged that the people should vote for parties, not for candidates. The ballots were to contain party symbols, not names, and the voters were merely to choose between these symbols. Then, when the votes in the whole kingdom were counted, the party obtaining the largest vote was to receive two-thirds of all the seats in the Chamber, the successful candidates to be taken in order from a list previously prepared by the party. The minority parties were to have seats allotted to them in proportion to the number of votes polled. The idea was to make sure that some one political party would be assured of a safe majority in the Chamber, thus putting an end to bloc government and ministerial instability.

And the
general
election of
1924.

The new electoral law received its first test at a general election in 1924. The Fascist party, as was intended, stood highest at the polls and got two-thirds of the seats under this system of unproportional votes. But the other parties, Liberals and Socialists, formed a vigorous minority and their criticism of the government on the floor of the Chamber sometimes became more outspoken than the Fascist leaders felt inclined to tolerate. Repressive measures were used to silence them. A prominent Socialist deputy, Matteotti, was abducted and murdered in true Chicago fashion. The affair created a great commotion and the non-Fascist members of the Chamber (known as the Aventine bloc) withdrew from its sessions. No attempt was made to coax them back; the Chamber went along with its work as a virtually undiluted Fascist body. For a time Mussolini took most of the ministerial posts for himself, but when his political reforms had been accomplished he dis-

tributed them to his lieutenants, retaining for himself the posts of prime minister and minister of the interior.

The record of changes made in the Italian political system during the years following 1924 is a remarkable one. Only the outstanding ones can be indicated here. When fascism was still in its formative stages it undertook to combat the power of the regular trade unions (which were under Socialist control) by organizing Fascist syndicates or trade unions. Later these unions were linked into loose federations of Fascist syndical corporations and gained recognition from the employers as the channels through which the workers were to be dealt with. Some of the employers, on their part, also organized federations, and the existence of these organized economic groups provided the basis for a national Charter of Labor which was issued by the government in 1927.

The rapid changes in political and economic organization.

This interesting document contains thirty articles.¹ It professes to be based on the postulate that the government is the guardian of all economic rights, whether of employers or workers. "The Italian nation," it begins, "is an organism whose aim, whose life, and whose means of action are superior to those of the individuals who constitute it." Labor in all its forms, intellectual, technical, and manual, is declared to be "a social obligation." The right of both employers and workers to organize is recognized, but only under the control of the state and in such manner as the government prescribes. No organization of employers or workers, except it be officially recognized, is permitted to function in the interests of its members, and no organization is to be given this official recognition if it is affiliated with any international body. This rules out all communist and socialist organizations, and in fact gives the government power to render impotent any non-socialist body which is not fascist in its sympathies.

The Charter of Labor (1927).

The officially-recognized syndicates, or separate associations of employers and workers, or of professional men, are empowered to make collective contracts regulating hours and conditions of labor, wages, and so forth, these contracts to be binding on all engaged in the industry, whether members of the syndicates or not. These syndical associations have power to exact from all employers or workers, as the case may be, an annual contribution

The syndicates, federations, and labor tribunals.

¹ An English translation, with a critical introduction by President William Green, of the American Federation of Labor, may be found in *Current History*, Vol. XXVI, pp. 445-449 (June, 1927).

not exceeding one day's pay roll in the case of employers and one day's pay in the case of workers. This fee is payable whether they are enrolled as members of the syndicates or not. Labor controversies are to be settled, in the first instance, by conference between the officials of the syndicates concerned. Failing success by this method they are referred to the federation in which the industry is included. It should be explained that all the separate syndicates of employers and workers are grouped into federations, and these again into seven great confederations or corporations, each covering broadly related industries. Representatives of employers and of workers come together from their respective federations in a "corporation." These corporations are made up by combining the syndical associations or federations of a particular industry, both employers and workers, together. If the controversy cannot be adjusted by the corporation, it goes to the nearest labor tribunal, of which there is one attached to each of the sixteen regular courts of appeal. The intent of these provisions is to prevent strikes, lockouts, and other interferences with the natural course of industry and trade. All strikes and lockouts are therefore prohibited.

Organiza-
tion and
officers.

The syndical associations may be organized on a local, provincial, or even a national basis. Each must have a president and a secretary. They are chosen as the constitution of the syndicate may provide and are paid from the obligatory dues. But no choice of a president or secretary is valid until approved by the governmental authorities in Rome. Each association also has a board of directors, but the board may be dissolved at any time by the government and its functions given to the president. Or the government may place a special commissioner in charge. As a measure of last resort the recognition given to any syndical association may be withdrawn. The same provisions apply, in a general way, to the federations and the confederations. There are seven recognized national confederations of employers and seven of employees.

The corpo-
rations.

Employers and workers do not come together in any of the above organizations. They stay apart. The corporations are the agencies which bring them together—for adjusting labor disputes, determining conditions of work, maintaining employment bureaus, and making trade regulations. The president and other officers of each corporation are appointed and removed by the minister of corporations who is a member of the national cabinet appointed by the head of the government. His office controls the whole machinery,

for the corporations are declared to be "administrative organs of the state."

The "corporative state" is thus a somewhat complicated affair at law; but it is not so intricate in practice. The syndical associations, federations, and confederations exist mainly as organizations on paper. They are managed by a few hand-picked officers who gather in the annual dues. As the officers are all of them dependable Fascists, and indeed active workers in the Fascist party cause, this plan of obligatory annual membership provides the party with what is virtually a great campaign fund. Moreover, the government (under Article 10 of the charter) may intervene and settle controversies without reference to committees or courts in case of emergency. What the whole machinery amounts to in reality is the adjustment of all economic controversies by small groups of officials who are supposed to represent all the interests involved but who are in fact named by the government through the minister of corporations. It is a scheme of compulsory arbitration by appointive officials.¹

The theory
and the
facts.

In 1928 this elaborate syndical machinery became the basis for a new electoral law which now regulates the election of members in the Chamber of Deputies. As will be explained in the next chapter, this law provides that nominations shall be made by the various confederations and then revised by the Fascist grand council. The lists are in fact prepared by the officers of each body, who would not be officers if they were not acceptable to the government. Together the confederations send in about 800 nominations. The grand council cuts it to 400, but in doing so it may add names that were not on any federation list. The revised list of 400 is thereupon submitted to the whole electorate at a general election for acceptance or rejection. It is a referendum, not an election. The people mark a yes or no. Fascism, through its grand council, or supreme governing body, has thus attained a constitutional place in Italian government as the authority which controls the nominations.

The syndi-
cates as the
basis of the
electorate.

Other conspicuous changes in the governmental system during the past few years have involved the complete centralization of control over local administration, the setting-up of a special régime for the municipal government of Rome, various changes in the

Other
changes.

¹ For the full text of the laws and regulations relating to these matters see Alberto Pennachio, *The Corporative State* (New York, 1927).

judicial system, and the settlement of the Roman question. All these transformations, embodying a great revolution in Italian government and life, have been accomplished by giving practical application to what is known as the political philosophy of fascism, which raises the question as to what this philosophy implies.

The basic postulate of fascism.

It has sometimes been said that communism is a dictatorship of the worker while fascism is a dictatorship of the employer. But like most snappy aphorisms this one is not true. Fascism does not contemplate that any class, either workers or employers, rich or poor, classes or masses, shall be permitted to rule. On the contrary its first postulate is a blunt denial that any class, group, or interest has the right to govern for its own benefit. The government must be supreme, not only in the political but in the economic life of the nation, and it should be so constituted as to give every class and every interest its fair share of representation, thus putting an end to class antagonism and substituting fair adjudication for the rule of force and violence in economic life.

Its philosophy developed as a reaction against the old democratic dogma.

To understand this fascist philosophy, however, one must go back a little in Italian history. The constitution of 1848 endeavored to set up a government modelled on that of England, with a limited monarchy and a ministry responsible to parliament. This constitution provided ample opportunity for the development of political liberalism, and Italy made use of this opportunity during the decades which followed the unification of the kingdom in 1871. But it presently became apparent that although the Italians had borrowed the frame of English government they had not acquired either the traditions or the spirit of it. In other words they endeavored, during the half-century 1871-1921, to maintain order and achieve progress with a party system which did not lend itself to either. The multiplication of party groups was a detriment to order while their instability was an obstacle to progress. The government could neither be conservative nor liberal for any considerable length of time. Both conservatism and liberalism require, in order to be workable, some better basis than party chaos and class warfare.

The crisis of 1920-1921.

The inherent weakness of a government does not come clearly into view during wartime because the patriotic fervor of the people clouds their eyes to the political ineptitudes so long as their brothers are in the trenches. But when peace and demobilization come, when the bills have to be paid, and the economic life of the nation

brought back to a normal plane: it is then that the people turn the full force of their criticism upon the powers that be. And so the years immediately following the armistice disclosed how ineffective the government at Rome could be. It boxed with shadows while the kingdom drifted toward anarchy. It had neither the strength to be firm nor the courage to be liberal. The ministry sat inactive while workers seized factories from their owners, peasants ousted their landlords, and employees on the government railroads deserted their posts. All this in the name of parliamentary government and political liberalism.

Under these circumstances Italy had only two alternatives. She might go the way of Russia, the whole way, and for a few weeks it looked as though this might be the outcome. Or her people might turn from Red revolution to Black, which they did. They allowed fascism to take the helm because it proposed to stand for nationalism, solidarity, order, firm government, and the revival of a kingdom that seemed about to collapse. The old Italian parliamentary system, which had failed, was based on the glorification of the individual citizen. It made him the end in government, and looked upon the state as merely a means to this end.

And the
choice be-
tween two
alterna-
tives.

Now the relations between the state and its citizens are completely reversed in the fascist philosophy. Society and the state are the ends. Democracy has looked upon the state as a mere aggregate of living individuals; fascism regards the state as "the recapitulating unity of an indefinite series of generations."¹ In other words the Fascists do not agree with the dicta of Tom Paine and Thomas Jefferson that a nation belongs to the people who inhabit it at any given moment. The living generation, according to the fascist doctrine, merely holds it as a heritage and a trust. The best interests of the state may therefore be different from those of the people who compose it at any given time. For society and the state overlap the existence of individuals and must do so if they are to serve their professed ends. Individual citizens come into the social unity where they abide their destined hour and go their way. But the social unity endures and is always identical with itself. It guards the welfare and promotes the advantage of the

Fascism
versus
democracy.

¹ A eulogistic exposition of fascist philosophy may be found in Alfredo Rocco, *The Political Doctrine of Fascism*, a pamphlet issued by the Carnegie Endowment for International Peace (New York, 1926) No. 223. See also J. S. Barnes, *The Universal Aspects of Fascism* (London, 1927), and the chapter on Fascism in W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930).

individual citizen to the extent that these coincide with the interests of society and the state as a whole. Individual rights are recognized only insofar as they are implied in the rights of the state.

Fascism
and other
cults.

Thus the orientation of fascism differs from that of liberalism, utilitarianism, socialism, and communism. Liberalism regards the freedom of the individual as the chief end of government. Utilitarianism seeks the highest good of the greatest number among the people. Socialism exalts the right of the individual to economic justice. Communism recognizes no rights but those of the individuals who make up the proletariat. The trouble with all these cults, according to the Fascists, is that they envisage the rights of individuals or groups of individuals. Fascism, by way of contrast with them all, does not refer political or economic problems to individual or group needs, interests, or solutions.

Fascism
and popular
sovereignty.

Fascism holds that democracy is a false gospel. For the latter turns the government over to the mass of living men and women that they may use it to further their own interests, or, more accurately, the interests of those groups among them which happen to be the most adept in politics. Democracy begins by asserting the divinity of the vox populi, and then proceeds to identify this divine voice with the uproar and clamor which politicians and lobbyists manufacture for their own benefit. Fascism, according to its apologists, "insists that the government be entrusted to men who are capable of rising above their own private interests and of realizing the aspirations of the social collectivity, considered in its unity and in its relation to the past and the future." It rejects the doctrine of popular sovereignty for state sovereignty. For government by the whole people it substitutes government by the chosen few who are capable of ignoring their own private interests in favor of the higher demands of society.

The su-
preme state.

The Fascists also argue that democracy has never put an end to class warfare, while fascism can and will do that. Many centuries ago the state abolished personal retaliation in individual quarrels, making itself the arbiter of all such controversies but giving the individuals the right to come into court with their respective claims. Fascism demands that the same be done with groups of individuals, with the classes—that class self-defense be replaced by public adjudication. To present their respective claims, however, the classes should be organized, hence the creation of the syndicates and federations. But these class organizations must be estopped

from taking their own redress, just as individual citizens have been. They must refer their controversies to the constituted authorities for settlement—that is, to the corporations and the courts.

There is a good deal to be said for this philosophy if one could believe it entirely sincere and if it were being exemplified in practice by the present Italian government. The charter of labor has a truly utopian ring, but its actual result has been to strengthen enormously the hold which the Fascist authorities have on the life of the nation. Industrial peace is a thing to be desired, but may not the extinction of all free government be too high a price to pay for it? Moreover the weak link in the whole chain of fascist philosophy is the lack of any objective standard whereby to measure and interpret the best interests of the nation as a whole. Due to this lack there is an inevitable danger that the party in power, whatever it may be, will go on maintaining itself by force, yet with a sincere belief that its own perpetuation in office is demanded by the national well-being. At any rate the Italian Fascists have a great admiration for Machiavelli, not merely because he was one of their countrymen but because he taught the doctrine that the strength and security of the state is the chief end of man, and that all things are justifiable in the attainment of this end.

The weak point in it all.

For the political history of Italy before the World War, reference may be made to Bolton King, *History of Italian Unity, 1814-1871* (2 vols., London, 1899); W. R. Thayer, *The Dawn of Italian Independence* (2 vols., New York, 1893) and his *Life and Times of Cavour* (2 vols., Boston, 1911); Pietro Orsi, *Cavour and the Making of Modern Italy, 1810-1861* (London, 1914); Bolton King and T. Okey, *Italy Today* (London, 1911); W. K. Wallace, *Greater Italy* (New York, 1917); A. Solmi, *The Making of Modern Italy* (New York, 1925); Benadetto Croce, *Italy from 1871 to 1915* (London, 1929); G. M. Underwood, *United Italy* (London, 1912); and G. M. Trevelyan, *A Short History of the Italian People* (London, 1920). A full bibliography may be found in the *Cambridge Modern History*, Vol. XI, pp. 908-913.

On the Fascist revolution and the Fascist philosophy a large number of publications have appeared during the past ten years. A selected bibliography of books in all languages (virtually all of them pro-Fascist) is printed as an appendix to the booklet on *The Political Doctrine of Fascism* by Alfredo Rocco, issued by the Carnegie Endowment in 1926 (No. 223). Among books in English the most useful for the general reader are

J. S. Barnes, *The Universal Aspects of Fascism* (London, 1927); E. W. Hullinger, *The New Fascist State* (London, 1928); L. Sturzo, *Italy and Fascismo* (New York, 1927); A. Lion, *The Pedigree of Fascism* (London, 1927); Alexander Robertson, *Mussolini and the New Italy* (New York, 1928); C. E. McGuire, *Italy's International Economic Position* (New York, 1926); Benito Mussolini, *My Autobiography* (New York, 1928); and H. W. Schneider, *Making the Fascist State* (London, 1929). H. N. Gay, *Strenuous Italy* (Boston, 1927) is a strongly favorable presentation by an American who has lived in Italy for many years. G. Salvemini, *The Fascist Dictatorship* (New York, 1927) is a formulation of the case against Mussolini.

Useful books in French are S. Trentin, *Les transformations récentes du droit public Italien* (Paris, 1929) and F. L. Ferrari, *Le régime fasciste Italien* (Paris, 1928). Mention should also be made of the excellent chapter on "Mussolini, Political Pragmatist" in W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), and of Corrado Gini's discussion of "The Scientific Basis of Fascism" in the *Political Science Quarterly*, Vol. XLII (March, 1927).

CHAPTER XXXVI

THE ITALIAN GOVERNMENT OF TO-DAY

L'Italia è fatta, ora bisogna fare gli Italiani.—Massimo d'Azeglio.

Italy remains a limited monarchy, with succession to the throne vested in the House of Savoy. This succession is regulated in accordance with the mediæval rule known as the Salic Law, by which none but male heirs to the throne are recognized. In case of any controversy relating to the succession, the Fascist grand council decides. Under the present arrangements this virtually gives it power to pass over the crown prince in favor of someone else. The present Italian monarch is Victor Emmanuel III, the great-grandson of Charles Albert who granted the Statuto in 1848. He has been on the throne since 1900. The chief executive power belongs to the crown, acting on the advice of the head of the ministry; but in case of grave emergency the king may take action on his own responsibility and his royal decrees then have the force of law. In such cases, however, he must communicate his decrees to one of the two chambers of parliament. The king is titular commander-in-chief of the armed forces of the kingdom; all appointments to civil office are made in his name; and his person, according to the constitution, is "sacred and inviolable." But under normal conditions all official actions of the monarch are on the advice of his chief minister.

Under the constitution of 1848, provision was made for a council of responsible ministers, appointed by the king, and all royal orders had to be countersigned by one of these ministers before it became valid. There was a prime minister, or president of the council under the old régime; but he held no position of supremacy over the other ministers. As in France he was merely the chief in a group of colleagues. Sometimes, indeed, the prime minister was outranked in influence by individual members of his cabinet and was dependent upon them for his continuance in office. The old ministries had from twelve to fifteen members, each serving as the head of a department. They went out of office on an adverse vote in the Chamber of Deputies.

The old ministerial responsibility.

The new
"head of
the govern-
ment."

In 1925 this constitutional arrangement was supplanted by a new one.¹ The president of the council of ministers, or prime minister, became endowed with the title "head of the government." He was given a clear preëminence over the other ministers and was accorded various special privileges. The new constitutional provision stipulates that the head of the government is appointed by the king and responsible to him for the general policy of the government. He chooses the other ministers, assigns their functions, directs their work and "coördinates their activities." The special nature of his position is attested by a clause which attaches heavy penalties to any attempted assault upon the head of the government, this being a provision which in other monarchical countries is applied to members of the royal house only.

His respon-
sibility and
powers.

Under the old constitution the prime minister was responsible to the Italian parliament. According to the amendment of 1925 the head of the government is responsible to the king. This is logical enough, for responsibility to parliament would mean little or nothing so long as the present electoral system is retained. The law of 1925 provides that no question can be placed on the calendar of either the Senate or the Chamber save by permission from the head of the government. This, of itself, precludes the discussion of any matter on which an adverse vote might be forthcoming. And in any case the power of the Fascist grand council to exclude from the list of nominations at the first election any name that has been proposed by a syndicate is sufficient to ensure that the ministers will not be harassed in the Chamber. To make assurance doubly sure it is provided that if either chamber rejects a measure the head of the government may require it to be reconsidered at the expiration of three months, in which case it must be voted on without discussion and by secret ballot. If one of the chambers defeats a bill, the head of the government may nevertheless require that it be submitted to the other chamber and voted upon there.

The Fascist
grand
council.

Mention has been made of the Fascist grand council which has now been elevated into a regular organ of Italian government. The head of the government is president of this council. Membership is of two categories, appointive and ex-officio. The former are named by the head of the government for a three-year term and are reëligible. The law stipulates that these appointive members shall

¹ Law of December 24, 1925.

be persons who have rendered special service "to the nation or to the fascist revolution." The ex-officio members include such functionaries as the ministers, the presidents of the Senate and the Chamber, the president of the Italian Academy, the presidents of the various confederations, and the higher officials of the Fascist party, all of whom remain members for the duration of their respective offices. The membership of the Fascist grand council is not restricted in size. Members of the council are not disqualified from holding seats in the Senate or the Chamber of Deputies. They have the usual immunities of legislators.

The Fascist grand council has three general functions, one of which is connected with the organization and work of the Fascist party as such, while the other two have to do with the nomination of deputies. In the first place the council names the chief officials of the party. These consist of a secretary-general (who serves also as secretary of the council) and a national directory of nine other members. This national directory is the executive organ of the party. Second, the council receives the lists of nominations for membership in the Chamber of Deputies, as submitted by the various syndicates, and selects from these lists the four hundred candidates whose names are submitted to the voters for approval.¹ Third, the council serves as an advisory body to the head of the government and his ministers. It is consulted on all questions relating to changes in the constitution, in the structure of the government, in the organization of the confederations and syndicates, and in the relations between church and state.

Its functions.

This combination of partisan and official functions may seem anomalous, but it is quite in keeping with the principles of unity and solidarity on which the present Italian government rests. The Anglo-Saxon idea that the best way to keep check upon the party in power is to build up a vigorous opposition party,—that idea has no place in the Italian political philosophy of to-day. On the contrary the Fascist reconstruction has proceeded on the principle that one political party should take all the power and assume all the responsibility. The Fascists have shown no reluctance in working the party organization right into the structure of government. Government and party are identified. In Great Britain and in America the two have been scrupulously dissociated. Political parties have been given no constitutional basis. It is true, however,

An official political party.

¹ See below, pp. 704-705.

that the practice of government in both these countries involves the use of parties and that without them the democratic régime would not function.

The Italian parliament:

1. The Senate.

The Italian parliament consist of two branches, known as the Senate and the Chamber of Deputies. The Senate, as established by the constitution of 1848, was made up of a few hereditary members (princes of the Italian royal house) but mainly of senators appointed by the crown. These appointive senators were selected from various categories of citizens, for example, the higher dignitaries of the church, persons who had held high offices in the government or high rank in the army or navy, members of the Royal Italian Academies, and others who by their service or eminent merit had done honor to their country. All were named for life terms.

As a matter of fact no bishops or other high dignitaries of the church were appointed to the Senate during the years 1870-1928 because of the strained relations between the Vatican and the Italian government. Most of the senators were chosen from the ranks of former officeholders (especially former deputies) although a considerable representation was drawn from the universities and the academies. The Senate could refuse a seat to any appointee whom it did not regard as constitutionally qualified, and such rejections sometimes took place.

A slight change in 1925.

Relatively little change has been made in the organization of the Senate as a result of the Fascist Revolution. In 1925 an amending law provided that governors of Italian colonies should be included within the categories of persons eligible for appointment. Otherwise the rules of eligibility remain as before. Appointments are made by the crown on recommendations from the head of the government. In as much as the size of the Senate is not fixed, this enables the party which is in power to gain and keep control of the upper chamber by adding as many new members as are needed to ensure a majority. The Senate is strongly Fascist. Its present membership is about 460, of whom all but a dozen are appointive senators.

Its powers.

Ostensibly the Italian Senate has always had equal legislative power with the Chamber of Deputies except for the customary provision that money bills must originate in the Chamber. But in actuality its powers have been far from co-equal. Before the Fascist Revolution the Senate had become a secondary chamber in every sense of the word. Ministries did not resign on an adverse senatorial

vote; most measures of all kinds originated in the Chamber and although the Senate sometimes amended these bills it almost invariably gave way when the Chamber insisted. Although the Senate contained, as it does to-day, a fine array of brains, education, scientific attainment, and political experience, it did not assume an important share in the moulding of public policy during the years which preceded the advent of Mussolini to power.

During the past ten years, however, the Italian Senate has gained somewhat in prestige. This is not because its powers have been increased but because the real authority and influence of the Chamber have been diminished. The Senate has gained some effulgence through the eclipse of the elective Chamber. In the old days, moreover, when the Chamber of Deputies rejected a bill, the Senate never got a chance to debate it at all. As most bills originated in the Chamber this greatly narrowed the range of the Senate's deliberations. But it is now provided that if the Chamber rejects a measure the head of the government may nevertheless require it to be sent to the Senate and voted upon there. And if the vote is favorable he may then transmit it to the Chamber for reconsideration without debate and for decision by secret ballot.

Its gain in prestige.

So long as the present régime continues it is profitless to discuss the relative importance of the two chambers which make up the Italian parliament. The head of the government controls them both. There is no serious opposition to him in either. All important issues of national policy are discussed by the Fascist grand council and decided there before they get to either house of parliament. In the British House of Commons there is a rule that no proposal to spend money can be considered unless it has been recommended by the ministry in the name of the crown. In the Italian parliament the principle of executive sponsorship is carried much farther, the rule being that "no subject can be placed on the orders of the day in either chamber without the approval of the head of the government." All measures which come before the Italian parliament are in effect "government measures," for without ministerial approval no bill gets on the calendar at all.

Limitations on business and debate.

The Chamber of Deputies has undergone a general overhauling, alike in its organization, powers, and procedure during the past ten years. Prior to the World War it was a body of more than 500 members, each of whom was chosen from a single-member district for a maximum term of five years. The suffrage included virtually

2. The Chamber of Deputies:

Its earlier basis.

all male Italian citizens twenty-one years of age or over, and the voting was by secret ballot. In general the plan was much like that which is used in electing members of the French Chamber to-day. If no candidate received a majority at the first election, a second polling was held a week later. Both elections were held on Sunday.

The dissatisfaction with it.

This electoral system resulted in the eclipse of national interests and issues by purely local and personal ones. Small districts elected small men. The voter's horizon was narrow and that of the deputy conformed to it. Elections turned on personalities rather than on programs and the deputy went to Rome with far more interest in getting favors for his own district than in promoting the national well-being. Party organization became chaotic and party discipline a myth; it was a case of every deputy for himself, with groups and blocs forming and dissolving at frequent intervals.

The changes of 1919 and 1923.

In an attempt to better this situation the electoral system was changed in 1919 to provide for larger districts, each electing several deputies according to the principles of proportional representation. The change seemed to promise an improvement but before the merits of the plan could be fully determined the Fascists got control of the government and replaced it (1923) by a scheme of their own. In the belief that many of Italy's political difficulties had resulted from the multiplicity of parties, and with the conviction that proportional representation would merely accentuate this party demoralization, the Fascists decided to set up a plan of "unproportional representation" instead.

The scheme of "unproportional representation."

This scheme of unproportional representation was unique, and although it has now been abandoned it deserves a word of description as one of the many interesting experiments in the art of government which have been tried in European countries since the close of the war. The law of 1923 provided that the entire kingdom should constitute a single electoral district. Each political party, on the eve of an election, was to nominate its list of candidates for the country as a whole. These names were then to be published for the information of the voters but were not to be placed on the ballots. Instead, the ballots contained only the symbols of the various parties, for example, the Fascist symbol, which is the Roman fasces and axe, and the symbol of the Popolari party which is a cross on a shield. The voter marked his ballot by drawing a line through the symbol of that party for which he

desired to have his vote recorded. The plan gave the voter a very simple task.

The most striking feature of this scheme, however, was the unproportional method of counting the ballots. The law provided that the party receiving the largest number of votes in the country as a whole, even though falling short of a majority, should be awarded at least two-thirds of the seats in the Chamber of Deputies, the names of the elected candidates being taken serially from the top of the party's national list. The other parties were to take the remaining seats in proportion to the number of votes cast for each of them. At the election of 1924 the Fascist list obtained about 40 per cent of the total vote and was given 356 seats out of about 500, thus ensuring the party a safe and unified majority in the Chamber.

How it worked.

The purpose of this plan was to put an end to the practice of government by blocs and coalitions. It aimed to provide a guarantee that, howsoever an election might turn out, some one political party would obtain a clear majority in the Chamber. Its control would be so secure and unquestioned that there could be no more shuffling of responsibility, no more non-fulfilment of party pledges, and no more stalling of the governmental machinery while insurgent groups demanded concessions as the price of their continued support. In a general way, moreover, the plan achieved its purpose. It gave the Fascists full control of the Chamber although they did not gain a majority at the polls.

Its purpose.

But the system of unproportional representation was highly unpopular with the non-Fascist elements among the people. To them it was merely a nation-wide gerrymander. They saw no good reason why forty per cent of the voters should elect more than forty per cent of the deputies. Nor was the plan altogether satisfactory to Mussolini and his supporters. It gave them an ample majority in the Chamber but it also brought into that body a sullen and irreconcilable minority, armed with real grievances and determined to provide the ministry with every ounce of trouble that they could manufacture. Then, when these minority members found that their obstruction was overborne by ministerial repression, most of them withdrew from the sessions altogether.

Its unpopularity.

The Fascist leaders then decided that not merely a two-thirds majority but complete unanimity was what Italy needed in her Chamber of Deputies. They were also of the belief that the nomi-

The new electoral law of 1928.

The lists of candidates.

nation and election of deputies should be linked with the hierarchy of syndicates and confederations which had now been set up, thus giving adequate representation to the organized productive forces of the nation. Accordingly, in 1928, the electoral procedure was once more transformed. Under this latest plan the membership has been reduced to 400. When the time for an election arrives each of the national confederations (see p. 690) prepares a list of candidates, its quota being fixed by law. Thus one national confederation is entitled to name twelve per cent of the candidates, another national confederation ten per cent and so on. Eight hundred names are proposed in this way. But only the high officers of the confederations (and they are government appointees) take any part in this process of selecting candidates. They are convoked in Rome for the purpose. In addition, a special commission of five senators and five deputies is appointed to prepare a list of cultural and educational associations which are also entitled to propose candidates and this list is revised every three years. Nominations are thus made from a variety of sources, but in all cases the government keeps the mechanism under its own control.

Revision of the lists by the Fascist grand council.

Then comes the revision and consolidation of these various quotas. The names go to the secretary-general of the Fascist grand council who arranges them in alphabetical order and submits them to the whole council for revision. The council may strike out any names on the list or may insert new names. In this revision the list is cut down to 400 candidates; it is then published in the *Official Gazette* and posted on billboards throughout the country under the direction of the minister of the interior.

The election takes place on the third Sunday after the official publication of this national list of candidates. It is not an election in the ordinary sense, but a referendum. The voters do not mark their ballots for candidates. They merely vote *Yes* or *No* on the question "Do you approve the list of deputies nominated by the Fascist grand council"? If the affirmative votes constitute a majority the whole 400 deputies are elected and take their seats. They sit for Italy at large, not for any part of it. Ostensibly they are the choice of the whole electorate. Their responsibility is to the entire kingdom, not to some small district or constituency. The system establishes a plan of *scrutinio di lista* on a nationwide scale.

The president of the court of appeals at Rome, together with the presidents of the four divisions or sections of that court, are constituted a national election commission to canvass the results of the referendum. The returns are transmitted to this commission and the result is publicly announced by it.

Announcement of the result.

But what if the majority at the polls is in the negative? In that case the national election commission orders a second election and fixes a date for the same. This date must be not less than thirty days or more than forty-five days from the time of the commission's order. Announcement of the second election must similarly be published in the *Official Gazette* and spread upon the billboards. And this second polling differs from the first in that it is an election, not a referendum. Nominations may be made by any association or organization which has a membership of at least 5,000 registered voters; but this freedom does not mean much because no associations are permitted to be organized without the government's consent. The national election commission, drawn from the court of appeals at Rome, has supervision of this second election also. It verifies the lists of nominees and submits a choice among them to the voters on election day. The voter does not mark his ballot for individual candidates but for the whole list of the association or organization which he prefers.

A second election when necessary.

The method of determining the result at this second election is a little complicated. The list which obtains the largest number of votes is entitled to have most of its candidates declared elected. But a designated number of seats are also reserved for minority lists and are divided among them in proportion to the number of votes which each minority list has obtained. The names are taken in order from the head of each list as officially announced before the election.

Figuring the outcome of it.

Only one election has as yet been held under this new plan (March 24, 1929) and on that occasion the list approved by the Fascist grand council was endorsed at the polls by an overwhelming vote.¹ It could hardly have been otherwise, for the ballots were printed on transparent paper and the Fascist militia, who guarded the polls, could see how every person voted. The new Chamber of Deputies, elected by this referendum, was a remarkably diversified body, including within its membership repre-

Make-up of the present Chamber.

¹ These figures were: For the Fascist list, 8,506,576; against the Fascist list, 136,198.

sentatives of every important economic, social, and cultural element in the country—but having no party divisions within its fold. Every one of the 400 members was a loyal Fascist. In its composition, therefore, the present Italian Chamber is unique. In most countries the legislature is politically diversified but its members are drawn largely from a narrow economic and social range. Lawyers, as a rule, form the largest single element, with business men, journalists, landowners, and professional politicians taking most of the remaining seats. This is true of Congress, the House of Commons, the French Chamber of Deputies, and the German Reichstag. But in the Italian Chamber, by way of contrast, the economic and social diversification is such that it leaves no class without its quota of representatives.

Occupations
of the dep-
uties.

This may be seen by a glance at the status and occupations of the 400 deputies who compose the existing Chamber. These are as follows: landowners, forty-six; industrial employers, thirty-one; merchants, sixteen; officials and employers engaged in maritime and air transportation, ten; in railway operation and inland navigation, twelve; bankers, ten; members of the liberal and artistic professions (lawyers, physicians, architects, sculptors, etc.) eighty-two; agricultural workers and peasants, twenty-seven; industrial workers, twenty-six; employees in commerce and trade, ten; seamen and persons employed in air transport, nine; employees in banks and other financial institutions, six; representatives of the universities, fifteen; members of the academies and institutes, five; members of the civil service, seven; school teachers, ten; representatives of war veterans' organizations, fifty-four; all others, twenty-four.

What the
Chamber is
supposed to
represent.

Thus is carried into operation the fascist doctrine that in as much as the chief task of a government is to promote the economic and cultural interests of the kingdom, it should provide representation for all the productive and intellectual forces rather than for mere differences of political opinion as represented by those squabbling groups which call themselves parties. The fascist philosophy assumes that the individual citizen's point of view on nearly all the great issues of public policy is determined by his economic and social station in life. This is because the issues are economic rather than political. They relate mainly to such matters as public finance and taxation, the relations of employer and employee, social insurance, trade and tariffs, and the promotion of indus-

trial prosperity. Such issues, it is believed, should be settled by discussion among representatives of the interest directly affected; they should not be turned over for settlement to groups of professional politicians who regard them as mere pawns on the chess-board in the play of partisan rivalries. To this end the Italian Chamber has been transformed from a political to an economic parliament with a liberal infusion of members representing the cultural interests of the kingdom.

Notwithstanding all this, the share of the Chamber in legislation, including even economic legislation, has become steadily smaller in recent years. It is now at the vanishing point. This is because the executive authorities have developed and extended the practice of lawmaking by decrees, or by decree-laws as they prefer to call them. Of course legislation by decrees or ordinances is no new thing in Italy. It is not a Fascist innovation. The old constitution retained for the crown the right to issue "the necessary decrees and regulations for the execution of the laws, without, however, suspending their observance or granting exemption from them." Under this provision large numbers of royal decrees were framed and promulgated by the ministers every year. But the limitations were strict. The decrees had to keep within the bounds of statutes passed by parliament and they had to be countersigned by a minister who was responsible to parliament.

Legislation
by decree.

Since 1925, however, a new arrangement has been in effect. By the provisions of a general law which was enacted in that year the powers of the executive to issue decrees have been greatly extended. These decree-laws may now be promulgated on various matters without the necessity of basing them on any existing statute. They are issued in the name of the crown and must have the countersignature of a minister, but the minister is not responsible to parliament. He is accountable only to the head of the government who in turn is responsible only to the king. Much important legislation has been put into effect during recent years without discussion in parliament at all. Ostensibly the Italian parliament can repeal or amend the provisions of a decree-law by enacting a new statute; but no proposal for such repeal or amendment can obtain a place on the calendar of either chamber without permission from the head of the government. As a practical matter, accordingly, the decree-making power of the executive is virtually conclusive and it extends over the whole area of legislation.

Its increase
during the
past few
years.

How the
Fascist
leaders de-
fend this ex-
tension.

The apologists for this system argue that it gives flexibility to the methods of lawmaking. It enables the country to have its laws made and changed promptly, without interminable debates and endless compromises. It embodies a plan of lawmaking by experts, who know what is needed and can adapt the provisions of their decrees to the actual requirements of the public well-being. But the dangers inherent in this expanded practice of legislation by executive decree are obviously considerable. The English House of Commons fought and won its battle with the Stuart kings on this very issue. Executive legislation has its merits, but it would seem to be capable of serious abuse unless the executive branch of the government is responsible to the representatives of the people.

The existing
suffrage.

In connection with the reorganization of the Italian government there has been no extension of the suffrage, and women have not yet been given the right to vote. The suffrage, at the present time, is extended to all male Italian citizens, twenty-one years of age or over (or over eighteen years of age if married or widowers with children) provided they satisfy one of the following four conditions: (a) are contributing members in any of the various syndicates, or (b) pay taxes, either national or local, amounting to at least one hundred lire (\$5.00) per annum, or (c) are employees or pensioners of the national or local governments or of any public institution, or (d) are clergymen of any religious body recognized by law. The total registered vote under these requirements is about 10,000,000 in a population of over 41,000,000. This means virtually full manhood suffrage. The number of adult male citizens who are shut out by the above-mentioned four conditions is very small.

No woman
suffrage in
Italy.

There was a woman suffrage movement in Italy during the years immediately following the war, and it was looked upon with favor by the Socialist party; but during the past decade it has been submerged out of sight by the fascistization of Italian political thought. Women employers and workers are admitted to membership in the syndicates and on one occasion Mussolini virtually promised that the national suffrage would be extended to include them;¹ but nothing in that direction has yet been done. In 1925, however,

¹ In his Padua speech of June 2, 1923, printed in *Mussolini as Revealed in his Political Speeches*, edited by Bernardo Quaranta di San Severino (London, 1923), p. 286.

women were given the right to vote at municipal elections, but since such elections have been altogether abolished (see p. 710) this privilege is now nullified.

For purposes of local government Italy is divided into 92 provinces, corresponding somewhat to the French departments.¹ Like the latter they vary considerably in size and population. Each province has as its chief executive officer a prefect whose functions are in general like those of his French prototype. These prefects are appointed by the crown on recommendation of the minister of the interior through the head of the government. At the present time Mussolini occupies both these positions. The prefect is not only the chief official of his province but serves as the provincial agent of the national administration. In all matters he is subject to its authority and supervision. He is assisted by a deputy-prefect and one or two provincial inspectors, who are also appointed from Rome. In case the prefect is incapacitated or absent, the deputy-prefect takes his place. There is also a secretary of each prefecture and a varying number of provincial employees.

Italian local government:

The provinces and their prefects.

Each province also had its provincial council until 1926, the members being elected by the people for a four-year term. But by the Fascist reconstruction of local government which took place in that year all provincial elections were indefinitely suspended. In place of the council each province was endowed with a *giunta* or appointive board, the members of which are appointed by the central authorities at Rome. This board has various functions in connection with the administration of the province and also with respect to the supervision of government in the communes. Under the old régime its functions were much like those of the general council of a French department, but in recent years they have been substantially curtailed. The prefect, deputy-prefect, and other administrative officers of the province are not amenable to the council's control but are responsible solely to their superiors in Rome.

The provincial boards.

The smallest unit of local government in Italy, as in France, is the commune. There are now 7,915 of them. The number was larger some years ago but many small communes have been combined. There is no legal differentiation in Italy between city, town, and village; all are rated as communes. Prior to 1926 each com-

The communes.

¹ Prior to 1927 there were 75; in that year new provinces were established, mainly from new territory which had been acquired as a result of the war.

mune had an elective municipal council and a *sindaco* or mayor who was chosen by the council from among its own members. But in that year both the councils and mayors were abolished in all communes of less than 5,000 population, and by subsequent decrees the same action was taken as respects the larger communes also.

The
podesta.

The chief executive officer of the commune, under the new centralization, is an official known as the *podesta*.¹ The title harks back to the cities of mediæval Italy. The *podesta* is appointed by the crown on recommendation of the minister of the interior; his term of office is five years and he is eligible for reappointment. But he may be removed by royal decree at any time. To be eligible for appointment as a *podesta*, one must possess certain educational qualifications which are laid down by law, or a designated amount of experience in municipal administration. Persons who served in the zone of operations during the world war with the rank of officer or non-commissioned officer, are exempted from these requirements.

His powers.

The *podesta*, under the new law, has acquired all the powers formerly vested in the *syndic* and the municipal council. He has thus become the focus of all municipal authority. He promulgates the laws and decrees which are sent to him from Rome through the prefect of the province; he is responsible for the maintenance of public order and security in his commune; he prepares the local budget and virtually fixes the municipal tax rate. As respects local matters he may issue decrees on his own initiative. In the larger communes the minister of the interior may appoint a deputy-*podesta*, and in cities of over 100,000 population he may appoint two of them. They assist the *podesta* by doing such work as he may assign to them and serve in his place during his absence or incapacity. Neither the *podestas* nor their deputies receive any salary, but they may be given allowances for expenses which sometimes amount to more than what the *syndics* were paid. They need not be chosen from the communities which they are set to rule and in fact are often sent in from outside.

The con-
sultative
councils.

The old municipal councils were abolished in 1926 and provision was made for the establishment of consultative councils in their place. These councils, which vary in size from ten to forty members, are obligatory in communes of more than 5,000 population

¹ The accent is on the last syllable.

but optional in the smaller ones. The councillors are appointed by the prefect except in cities of over 100,000 population. In these they are named by the minister of the interior. But in either case the appointments are made from lists of names submitted by the local syndicates. The functions of the councils are altogether advisory. They have no final powers of any kind and are merely consulted by the podesta when he desires advice.

From all this it must not be assumed that the podesta is a local dictator, free from all surveillance and control. He is not accountable to the people of his commune, it is true; but supervision over all his actions by the higher authorities is strict and continuous. A memorandum setting forth all actions taken by the podesta must be transmitted daily to the prefect of his province, and the prefect may overrule any such action within fifteen days. The budget of the commune must also go to the prefect who has thirty days in which to approve or disapprove it. If the prefect has any doubt he sends one of his provincial inspectors to the commune to make investigation. And if he finds that the local authorities are incompetent or negligent in the matter of any local service, he may send experts (at the expense of the commune) to effect the necessary improvements.

Central
supervision.

In the case of proposals to borrow money on the credit of the commune, and in certain other matters the consent of the provincial *giunta* must be obtained. This board has also been given a variety of supervisory powers with respect to the acquisition or sale of lands by the communes and economic activities in general. When controversies arise between podesta and prefect, or between the local and the provincial authorities with respect to their rights and jurisdiction, the minister of the interior has power to intervene and decide.

Rome, the Italian capital, has been under a special dispensation since 1925. Its mayor and elective council were then abolished and replaced by an appointive municipal organization which consists of a governor, two deputy governors, and ten "rectors." All are named by the crown on the advice of the minister of the interior. The governor is the podesta of Rome, assisted by his two deputies. The rectors serve as the heads of the various municipal departments and services. They do not form a board but serve as individual administrators under the governor's direction. There is also a consultative council of eighty members who are appointed from

The govern-
ment of
Rome.

lists prepared by the various syndicates and associations recognized by law.

The high degree of centralization.

The existing plan of local government in Italy thus embodies a very high degree of centralization. Podestas, prefects, and the minister form the three rungs in the ladder of rigid central control. Through his 92 prefects and his 7,915 podestas the minister has a direct channel of authority over every official of local government from one end of the kingdom to the other. This provides one reason why Mussolini has chosen to retain the post of minister of the interior for himself. The extinction of local self-government (as Americans understand the term) is virtually complete. The people elect nobody in any branch of local administration. Even the advisory boards and councils are appointed. The concentration of power is more intense in Italy than in any other European country, not excepting Russia.

The legal system.

Changes of high importance have also been made in the Italian judicial system during the past ten years, and here again the trend has been strongly toward centralization. In their early development the Italian legal and judicial systems owed a great deal to France. After the unification of the kingdom the Italian government followed the Napoleonic example and gave the kingdom a series of codes. These embody the civil law, the criminal law, the procedure in both fields, the laws relating to commerce, and so on. The Italian codes follow the principles of the old Roman jurisprudence and in general bear a resemblance to the codifications which were put through in France, earlier in the nineteenth century, by the energetic Corsican.

Integration of the law.

Prior to 1923 there were five courts of cassation in Italy, with no supreme court for the whole kingdom. This proved an obstacle to the uniform interpretation of the law, as set forth in the codes. One interpretation of a rule would hold in the north of Italy, another in the south. But the elevation of the court of cassation at Rome into a court of final jurisdiction has put an end to this variation. To-day there is uniformity both in the rules of law and in the meaning of these rules. This does not imply, however, that a decision, when once given by any Italian court, must stand as a judgment to be followed. The Anglo-American legal doctrine of *stare decisis* has no place in Italian jurisprudence. Every decision, even in the court of cassation, stands on its own feet. The court may reverse its interpretations at any time, and does so frequently.

This practice has some merits in keeping the interpretation of the law abreast of current needs, but it puts an element of uncertainty into the administration of justice.

The judges in all the regular courts are appointed by royal decree, on recommendation of the minister of justice; but they must be persons who possess certain qualifications in the way of legal training and experience laid down by law. As in France they are usually chosen from those who have prepared themselves for a career on the bench, and not from among lawyers engaged in the active practice of law, as is the American custom. Judges of the higher Italian courts are ordinarily appointed by promotion from the lower ones. No Italian judge may be removed from office except after a hearing before the superior magisterial council, which is a body made up of high judicial officers with the president of the court of cassation as chairman. This superior magisterial council also prepares and keeps up to date a schedule showing the qualifications and experience of all the judges and public prosecutors. This schedule is followed by the minister of justice in making promotions.

How judges are named.

Promotions and tenure.

The lower courts of Italy are organized on a district basis. The whole kingdom is divided into primary judicial areas, each with its own local court with a magistrate or prætor at its head. These courts have a limited jurisdiction in both civil and criminal cases. Above them are superior courts, more than a hundred in number, which hear appeals from the lower courts and have original jurisdiction in more important civil controversies. For serious criminal cases there are courts of assize which sit with a jury. Mention should also be made of the special courts which have been set up to try persons accused of offences against the Fascist régime, such as the organization of unauthorized political associations. These courts, made up of officials, do not afford accused persons the protection of a jury trial.

The gradation of courts:

1. District court.

2. Superior courts and courts of assize.

Above these intermediate courts are sixteen courts of appeal with headquarters in various parts of the kingdom (Rome, Milan, Palermo, Naples, Venice, etc.). These courts have branches or sections which hold sessions in the less important cities. Thus the court of appeal at Milan has a branch at Brescia. Each court of appeal has a special section which serves as a labor court and decides controversies which arise under the provisions of the labor charter and other laws relating to the rights of employers and workers (see *above*,

3. Courts of appeal.

4. The
court of
cassation.

pp. 689-690). Finally, there is the court of cassation at Rome with final jurisdiction in all civil and criminal cases. As in France the court of cassation is a large body and its judges are assigned to sections or divisions of the court. This court also serves as a tribunal for deciding all controversies as to the respective jurisdictions of the ordinary courts and the administrative courts.

Adminis-
trative law
and courts.

For Italy, like France, has a system of administrative law and administrative courts. The general principle is the same in both countries, namely, that public officials are not amenable to the jurisdiction of the ordinary courts for acts performed in their official capacity. Administrative courts are maintained for the hearing of complaints in such cases. In each Italian province there is an administrative court made up of the prefect and certain other provincial officers together with six additional members appointed by the provincial council. Appeals from the decisions of this court may be taken, in most cases, to a special section of the council of state which sits in Rome. At least seven members of the section must be present to hear each appeal, and decisions are reached by majority vote. The councillors of state who make up this section are designated each year by royal decree.

The Italian
council of
state.

A word should be added concerning the council of state. It is organized in much the same way and has in general the same functions as its French prototype. To-day the Italian council has a president, six presidents of sections, and fifty councillors, besides various auxiliary officials. All are appointed by the crown on recommendation of the minister of the interior. They may not be removed, or transferred, or reduced in salary except under conditions which are prescribed by law. These conditions are such as to afford them a reasonable permanence of tenure under ordinary circumstances, but during the past few years all councillors not amenable to Fascist control have been eliminated by one means or another.

As in France, the council of state is divided into sections, all the councillors being assigned to the various sections at the beginning of each year. The rule is that at least two changes, and not more than four, must be made in the personnel of each section annually. For the decision of a few matters the council meets as a whole. All proposed laws and decrees are submitted to the council for its revision as to form and phraseology before they are enacted or issued. This work is done by one of the sections but is submitted to the council as

a whole and discussed in plenary session before the council's final approval is given. The council of state thus serves as an agency for coördinating new legislation with older provisions, and its work in this field has been of great value.

In addition to the various books listed on pp. 695-696, mention may be made of G. A. Chiurco, *Storia della Rivoluzione Fascista 1919-1929* (5 vols., Florence, 1929) which is the most comprehensive history of the fascist reconstruction, from a fascist point of view. Eugène Godefroy, *Le royaume d'Italie* (Paris, 1929) explains in concise form all the constitutional changes of the past decade. Carmen Haider, *Capital and Labor under Fascism* (New York, 1930) is very useful on the subject with which it deals. Alexander Robertson, *Mussolini and the New Italy* (2nd edition, London, 1929) is a favorable account of what fascism has accomplished. Dr. Alberto Pennachio, *The Corporative State* (New York, 1927) discusses the relation of government to the syndicates.

CHAPTER XXXVII

ITALY'S PROBLEMS AT HOME AND ABROAD

It is impossible to understand the age-long need which has always determined the general lines of Italian policy without taking into account the two principal factors which still govern Italy's present and future—the growth of her population and her geographical position in the Mediterranean.—*Francesco Coppola*.

The heritage of the past.

Italy is a land of problems, many of them inherited from the past. One of the most perplexing of these heritages has been the Roman question, in other words the question of relations between the Italian government and the Pope. This problem was an embarrassing factor in Italian politics from 1871 to 1929 when a new agreement between the Fascist government and the Holy See provided an amicable solution for the moment at least and perhaps for all time. To understand this new agreement, however, one must know something about the older disagreement, how it arose and why it persisted so long.

THE ROMAN QUESTION

The Vatican and the Congress of Vienna.

The Papal States.

The origins of the Roman question go back a long way, back to the fourth century when the capital of the Roman empire was moved to Constantinople and the Papacy secured the opportunities which ultimately placed it in possession of the Eternal City. But it is not necessary to follow the history of the Vatican through the middle ages and down into the modern centuries. It is enough to begin with the Congress of Vienna (1814–1815) which confirmed the Pope in possession of Rome and the Papal States as a civil sovereign. During the years down to 1870, therefore, the Pope occupied a dual position. He was the head of the Roman Catholic hierarchy in all countries, and he was also the secular sovereign of Rome and of the States of the Church. These states had no constitution. There were no limitations on the powers of the Pope as a secular ruler. He had ministers, but no parliament. He appointed governors and civil magistrates; he promulgated the laws, and by his authority the taxes were levied. This secular rulership of the

Vatican had some meritorious features, but the practice of combining temporal with spiritual rulership has never proved very satisfactory anywhere.

At any rate the people of Rome and the Papal States desired a representative system of government, and in 1848 they clamored for a constitution quite as loudly as did the people in other parts of the country. Pope Pius IX granted a constitution, but this action did not allay the discontent and during the troubles a short-lived Roman republic was established. The French government intervened as protector of the Papacy, however, and restored the temporal power of the Vatican. The constitution was abolished. Things were put back on their old footing. But the success of the nationalist movement in the other Italian states kept the whole Roman question alive and forced it to the front wherever the future of Italy was under discussion.

Their government.

So the whole problem resolved itself into this: Italy was determined to be united, with Rome as her capital. That necessarily involved the termination of the Pope's temporal power. One or the other had to give way. Until 1870 France stood by as the guarantor of Papal sovereignty and the Italian government had to wait in patience. But when Napoleon III threw his country into the ill-starred war with Prussia and was forced to surrender at Sedan, the Italians lost no time in turning the French débâcle to their own advantage. In 1870 Italian troops entered Rome on the heels of the French withdrawal and thus, after twenty-five years, realized Cavour's dream of a completely reunited Italy. The temporal power of the Holy See was declared to be at an end and what was left of the Papal States were incorporated into the Italian kingdom.

The taking of Rome (1870).

Now it was not the intention of the Italian government to embarrass the Pope in the exercise of his spiritual rulership; on the contrary it desired to accord the Vatican every privilege and immunity consistent with the exercise of the new national sovereignty. In keeping with this attitude the Italian parliament, in 1871, passed a comprehensive statute known as the Law of the Papal Guarantees. The general purpose of this statute was to ensure the Pope full freedom of action as supreme pontiff. It therefore accorded him most of the privileges of a civil sovereign. All offenses against him were made equal in seriousness to offenses against the king. He was confirmed in his use of the Vatican

The Law of the Papal Guarantees (1871).

and Lateran palaces, with all their grounds and buildings, free from taxes perpetually. The law provided that ambassadors and other diplomatic officials accredited to the Vatican should have all the legal immunities given to other ambassadors, including freedom from arrest by the Italian authorities. All Italian officials were forbidden by the law to set foot within the precincts of the Vatican without the Pope's permission, or to censor communications between the Papacy and the outside world. Finally, the statute provided that an annuity of three and a quarter million lire (nearly \$650,000) per annum should be paid each year to the Holy See from the royal treasury as compensation for the loss of Papal revenues due to the taking of Rome.

The Pope's refusal to accept it.

Although these guarantees went a long way they did not satisfy the Papal authorities who felt that Italy had done a wrong which could not be set right by diplomatic courtesies, tax exemptions, or money payments. Hence, while the law of 1871 remained on the statute book until 1929, each successive Pope declined to recognize its provisions in any way. Without exception, all the Popes from 1871 to 1929 refused to set foot outside the Vatican grounds, or to take a single lira of the government's annuity. So bitter was the resentment of Pope Leo XIII that he advised all loyal Catholics to refrain from voting, or from accepting any office in the Italian government, and in 1895 the advice was stiffened into a command by the decree *Non Licet*. But this policy of non-coöperation did not prove a success. Italians as a people are too fond of politics, and of official emoluments, to abstain from activity in public affairs.

Non Licet.

Relations between the Vatican and the Italian government.

The decree *Non Licet* was not formally revoked, but its rigidity was considerably softened by Pius X, who not only permitted but encouraged Italian Catholics to vote whenever their abstention would result in the election of an avowed Socialist or anyone hostile to the Church. The promulgation of this new policy led to the forming of a Catholic party in Italy, somewhat analogous to the Centrum in Germany; but prior to the close of the world war it did not develop any large measure of strength in the Chamber. This was partly because the restoration of the Pope's temporal power was deemed to be one of its principal aims and the great majority of the Italian people regarded that as an utter impossibility.

The Pope's pro-gram.

During the World War, however, the relations between the Vatican and the Italian government became somewhat more friendly and when the war came to a close the Catholic party was

reorganized with a new name and a somewhat broader program. It became the Partito Popolare, or People's party, with a platform which advocated many reforms in government but made no mention of the Roman question. Among internal reforms the Popolari declared for woman suffrage, proportional representation, a reconstruction of the Senate, together with a long list of changes in local government, in the judicial system, and in national finance. On the other hand they were against the Socialists on religious grounds, and proposed a solution of the industrial problem by means of social insurance, coöperative production, and the protection of the worker by law.

This program was not altogether irreconcilable with the aims of the Fascists and although the new electoral laws involved the eclipse of the People's party an entente cordiale between the government and the Vatican began to develop. As part of the fascist program to exalt the moral and spiritual aspects of education, religious instruction was reintroduced in the public schools and the olive branch was held out in other ways. In this new atmosphere overtures were made by the government for the opening of negotiations which might lead to the framing of a Concordat. The Vatican responded and the negotiations began. As the issues were delicate, and difficult of adjustment, the conferences (which were conducted without publicity) extended over more than two years; but they eventually resulted in a full agreement (February-June, 1929).

The new
friendliness
and the
final recon-
ciliation.

This agreement was embodied in three documents, a treaty, a Concordat, and a financial convention. The first is of international significance because it set up a new sovereign state, or, more accurately, it restored a portion of an old one. The second document, the Concordat, concerned only the relations between the Papacy and the Italian government; while the financial convention adjusted all the monetary claims of the Vatican arising out of the loss of temporal power in 1870. All three agreements were signed simultaneously and form part of a general settlement.

The agree-
ments of
1929:

The States of the Church, which had been incorporated into the kingdom of Italy, comprised about 16,000 square miles and extended from mid-Italy to the sea. Their population exceeded three millions. The new state, established by the treaty of 1929, and to which the name Vatican City has been given, includes an area of about a hundred acres only. It comprises the Vatican and

1. The
treaty.

the Lateran palaces as well as numerous small additional tracts of territory, with a present population of about five hundred. Thus Vatican City is the smallest among the sovereign states of the world. But it has all the appurtenances of civil sovereignty, with the right to send and receive ambassadors, with its own coinage and postal system, its own laws and courts. In addition some other tracts (such as the Villa of Castel Gondolfo), not included in Vatican City, are given the status of extraterritoriality, that is, they are removed from the jurisdiction of the Italian government and placed under the civil control of the Holy See. All this territory is declared to be neutral and inviolable, and freedom of intercourse with other states is guaranteed at all times, including countries which may be engaged in war with Italy. On the other hand the Holy See has undertaken not to embroil itself in international combinations or to take part in international conferences "unless all the parties in conflict appeal unanimously to its mission of peace." This means that Vatican City, although a sovereign state, will not seek admission to the League of Nations.

2. The
Concordat.

The Concordat is a longer document, containing forty-five articles. The Catholic religion is given official recognition as the state religion of Italy. Religious instruction is made compulsory (for Catholics) in all public schools. The teachers in this field are chosen by the Church and paid from the public treasury. But the officials of the Church have no authority with respect to the teaching of secular subjects in the school curriculum. Under the Law of the Papal Guarantees the bishops of the Church in Italy were named by the Pope but the approval of the Italian government was also required. Under the Concordat of 1929 this approval is no longer essential, but the government may interpose an objection to the appointment of any Italian bishop if there are political grounds upon which such objection may be based. Before assuming charge of their dioceses, moreover, the new bishop must take an oath of civil allegiance.

Various
concessions.

Several provisions of the Concordat deal with the question of marriage and divorce. Prior to 1929 a civil ceremony was required in the case of all marriages. This is no longer necessary, if certain rules concerning registration are complied with. Priests and members of religious orders are exempted from the obligation of military training and service except in case of a general mobilization, in which case they may be called upon to serve as chaplains. This

exemption does not include students for the priesthood or novitiates in the monastic houses. Various religious holidays are accorded civil recognition. The person of the Pope is declared inviolable. Titles of honor and of nobility conferred by the Sovereign Pontiff are recognized by the Italian government, including all that have been bestowed since 1870. Various other matters which had long been in controversy were settled by the provisions of the Concordat.

The financial agreement of 1929 is brief and businesslike. The Papacy, although entitled to an annuity during the years between 1870 and 1929 had never taken a single lira of it, because such action would have been construed by the Italian government as an acceptance of the Law of the Papal Guarantees. The payment agreed upon in 1929 was a compromise on both sides. The Vatican accepted seven hundred and fifty million lire (about \$39,000,000) in cash and a billion lire (about \$52,000,000) in government bonds as a full settlement of all its financial claims. To set its seal on the entire series of agreements the Holy See formally declared the Roman question to be "definitely and permanently settled."

The
financial
convention.

Thus was solved an embarrassing problem with which Italian ministers and ministries had unsuccessfully wrestled for two generations. Francesco Crispi once declared that the minister who could clear this problem off the slate would be entitled to rank as the greatest Italian statesman of all time. That is an exaggeration, of course, but the achievement was assuredly one of large dimensions. Various motives were attributed to Mussolini in connection with it, but there is no need to go searching for far-fetched explanations. Fascism seeks to eliminate all conflicts between section and section, between class and class, thus enabling Italy to function as a unit. What more natural than that fascism should strive to settle one of the most outstanding and apparently irreconcilable conflicts—that between Church and State. It will be retorted, of course, that it settled this one by impairing the territorial integrity of the kingdom, and in principle that is true; but fascism is pragmatic in its point of view and as a practical matter the impairment of Italy's territorial integrity is exceedingly slight. It affects less than one one-hundred thousandth part of the national area. On the other hand the agreements have procured for the government great advantages both in international and domestic politics.

Importance
of the set-
tlement.

COLONIAL EXPANSION

An over-
crowded
kingdom.

If you take a map of Italy and place it atop a same-scale map of California you will find that it covers only the northern part of the state, that is, the portion which lies north of the Tehachapi. Northern California has about three million people, while Italy has more than forty million. The Italian population, moreover, is increasing rapidly. The excess of births over deaths is nearly half a million a year. This year-by-year accession to the ranks of the people makes emigration imperative and it is estimated that more than ten million Italians are now living outside their home country. In spite of this exodus the density of population in Italy is 325 persons to the square mile, while that of France is only about 185.

The lack of
colonies.

This density is the root of some serious problems. The encouragement of emigration could be used to alleviate it if Italy had an Australia or a Canada to which her people might go. But she has no overseas territories comparable with those of Britain, France, or even Holland. Her colonial possessions are inferior to those of Denmark and Portugal. It is not that the Italian people have been lacking in colonial initiative, or that they have been unwilling to go out and replenish the earth. It was an Italian who discovered the new world, yet Italy has never owned a single foot of the great continents that Columbus found.

Reasons for
this.

The lack of a colonial empire is largely due to the perversities of Italian history. Italy did not attain national unity until after the middle of the nineteenth century, and by that time most of the territories available for colonization had been taken up by other nations. There were still opportunities on the north coast of Africa, however, and Italy began to cast covetous eyes on Tunis. But France was too quick and forestalled her there. Meanwhile the Italians had acquired a footing on the western shore of the Red Sea and presently came into controversy with the contiguous Ethiopian empire of Abyssinia. In due course Italy asserted her suzerainty over this territory but when the time came to make good her claim she failed utterly. A military expedition which went in 1896 to impose Italian control upon Abyssinia was virtually annihilated, and Italy gave up her dream of an Ethiopian empire. She still retains, however, the colony of Eritrea on the Red Sea, and Italian Somaliland farther south.

Italy's other African possession is Libya, which lies along the

north coast between Tunis and Egypt. From the sixteenth century until the twentieth this area was under the sway of Turkey. On the outbreak of war between Italy and Turkey in 1911 the Italians invaded this territory and in the following year it was declared to be an Italian possession. Although the entire area is about four hundred thousand square miles the Italians have as yet asserted a mastery over only a small portion of it, including Tripoli and Cyrenaica. At the close of the world war Italy also acquired title to certain islands in the Ægean.

Italy's overseas possessions.

Taking them together, these colonial possessions have a large area, much larger than that of Italy herself, but they have no important natural resources yet discovered. They are not rich in iron ore or coal. They are not likely to yield petroleum. They are not well suited for growing wool, cotton, tobacco, or the other great staples. The African territories are lacking in adequate water supplies and their climate is not suitable for colonization by Europeans. They are unlikely to prove anything but economic liabilities for many years to come. Italy can export men, not capital; and what these Italian colonies need is capital rather than immigrants.

Their small value.

Yet the Italians cannot give up their colonial ambitions. Geography precludes their doing so. Italy is already overcrowded and is bound to become more so. The industrialization of the country would render it capable of supporting a larger population, but the raw materials of industry are lacking. Iron ore is not at hand except in scattered deposits of mediocre quality. The coal resources are limited for the most part to low-grade lignite. These two fundamentals of modern industry, iron and coal, have to be imported. Oil has not been found in quantities which would justify commercial production. Consequently the Italians have been trying hard to harness their rivers by hydro-electric installations and thus to provide cheap motive power for industry. Meanwhile agriculture remains the backbone of Italian economic life. Nearly half the area of the peninsula is under cultivation, and the land is cultivated with great intensity. It is made to raise a wide variety of products, nevertheless Italy has had to import each year a large quantity of cereals, cotton, and wool. She is not able to produce sufficient food for her own people.

The problem of national resources.

This explains Italy's continued insistence upon the proposition that she must have more elbow-room. Her need is for possessions

A safety-valve needed.

from which she may draw foodstuffs and the raw materials of industry, and to which she may send her overflow population. Before the world war the United States furnished the chief outlet for Italian immigration, but this has now been heavily curtailed by the American quota-law and the tide has been somewhat diverted to France, which is perhaps the least welcome form of relief that could come to Italy. The reduction in Italian migration to America has had an unfavorable effect upon many branches of economic life in Italy because it has reduced the total amount of remittances sent by Italian-Americans to their relatives at home. This has been an important item in the national income and has helped to steady the rate of foreign exchange.

Italy's
dilemma.

Where will Italy acquire the "place in the sun" to which her people may go and still retain their old allegiance? A few big empires to-day control the raw materials and the empty spaces fit for colonization. They have all the exploitable territories. Such territories can only be had for Italy by wresting them away from somebody else. To take them from Great Britain seems out of the question. To wrench them away from France may not be inconceivable, but it would probably mean a Franco-Italian war which might widen into another European conflagration. Hence the solution of Italy's urgent problem is not one that concerns herself alone, but is an international problem of serious importance.

TRADE AND COMMERCE

Problems
arising from
geography.

Population has given Italy one of her most difficult problems, but geography furnishes another. Glance at a map of Europe and you will see that Italy is the only great nation that has a frontage upon a single sea. France has the Atlantic and the Mediterranean, Germany the North Sea and the Baltic, Russia the Baltic and the Black Seas, while Great Britain has her "seven seas," so called. But Italy is exclusively Mediterranean, for the Adriatic is only a projection of the great Mittelmeer. Indeed, Italy has no other means of commercial intercourse with the rest of the world, for her northern frontiers are guarded by mountains which make commerce difficult. Four-fifths of Italy's commerce is maritime. Her imports and exports, her security, her very existence thus depend upon the free use of the Mediterranean.

Besieged
within her
own ocean.

Yet Italy does not control the sea which means so much to her. England holds one entrance at Gibraltar and another at the Suez

Canal, besides being entrenched at Malta. France stands sentinel at Toulon and at Byzertá. The whole southern shore of the Mediterranean, with the single exception of the Libyan desert, is under the ægis of these two countries. The Italians stand besieged within their own ocean. An enormous mileage of Italy's coast line is open to attack by any power that controls this ocean. A blockade of Italy's ports might at any time shut off not only the food supply but essential supplies of raw material and thus paralyze the industries of the nation.

It is not enough to say that the Italians are themselves mainly to blame for this embarrassing situation in as much as they spent their time in civil strife while France and England were attaining national solidarity. Placing the blame does not help to solve a national problem, and anyhow you cannot indict a whole people. Nations, like individuals, must look to their own self-preservation. That is why Italy has been so insistent on having naval parity with France, an insistence which placed an insuperable barrier in the way of the London naval conference of 1929.

The naval parity question.

It seems essential to the Italian government that not only shall the ports of commerce be kept open at all times but that trade with the rest of the world shall be built up to larger proportions. Italy's chief exports are vegetables and fruit, wine and vegetable oils, silk and artificial silk, along with varied manufactured products. Great Britain, the United States, Germany, France, Argentina, and Switzerland are her principal customers. To stimulate foreign trade the Italian government has embarked upon the policy of subsidizing the merchant marine and reducing the tax burdens on shipping. New commercial treaties have also been made with many countries. In response to the stimulus there has been an increase in exports but the balance of trade is still adverse. Italy imports more than she sends out and this fact creates a continuing problem in foreign exchange.

Foreign trade problems.

BUDGET AND DEBT PROBLEMS

Before the war Italy had considerable difficulty in making her national budgets balance. The excess of expenditures over revenues, if one takes the five-year period 1910-1915, was considerable. The war increased the Italian public debt enormously and thus magnified the item of interest charges in the post-war budgets. Hence the years 1919 to 1922 were marked by annual deficits of

Budgets, deficits, and debts.

huge proportions which were liquidated by borrowing money and thus increasing the national indebtedness still more. Italy's public debt in 1914 was only sixteen per cent of the estimated national wealth; but by 1921 it had risen to nearly thirty-five per cent. The lira which was fifteen cents at the beginning of 1919, had dropped to less than four cents by the beginning of 1921. The old government proved unable to retrench expenditures sufficiently and lacked the courage to overhaul the tax system.

Fascist
financial re-
forms.

Beginning with 1922, however, Italian finances have undergone some improvement. The new Fascist government cut expenses, reconstructed the system of taxation, and brought both columns of the budget nearer together. In time it managed to make them balance. Moreover it was able to stabilize the exchange value of the paper lira at nineteen to the dollar, where it has since remained. The floating portion of the national debt was properly funded and its carrying-cost reduced. Settlements of Italy's war debt to Great Britain and to the United States were effected on favorable terms. Whatever one may think of fascist political philosophy it would appear that the Mussolini government has, for the moment at any rate, steered Italy out of a financial mess which seemed hopeless.

The heavy
burden of
taxes.

But the Italian authorities are not yet out of the woods in a fiscal sense. To balance the budget has involved the imposition of heavy taxes—more burdensome than any government of the old type would have had the courage or endurance to levy. National and local taxes, it is estimated, now absorb nearly twenty per cent of the entire earnings of the Italian people. In the United States the estimate is less than ten per cent. In proportion to their income the people of Italy are more heavily taxed than are the people of any other important country.¹ The burden is onerous, almost intolerable. Italy's outward appearance of economic vigor and prosperity cannot mask the fact that her people are poorer, on the whole, than they were before the war. A program of military and naval expansion is ominous in the face of this situation.

A summary.

Briefly summarizing Italy's present-day interests and problems, one might state them in a series of propositions as follows: Italy needs room for expansion and her need constitutes a danger to international peace. To protect her incoming food supply and raw materials she believes that naval parity with France is essential. It is the aim of the Italian government to reduce the volume of

¹ C. E. McGuire, *Italy's International Economic Position* (New York, 1926), p. 101.

imports and to build up a larger export trade. But this is extremely difficult in the face of rising tariffs everywhere, and in any case Italy's foreign markets are both inadequate and uncertain. The burden of the war debt, both domestic and foreign, together with the relatively meager return which Italy stands to get from German reparations—this has necessitated taxation of such a burdensome character that no government save a virtually irresponsible one can hope to maintain it for any considerable length of time.

To solve her varied problems, and to secure her essential interests, Italy has organized herself under Fascist leadership in a way which is supposed to combine "all the material and moral forces of the nation into a single dynamo of production." The sullen acquiescence of the Italian people in this form of national organization, involving as it does the extinction of all that goes under the name of democracy, is in response to a recognition of the gravity of their economic problems. The Fascist régime was not created by a country that saw clear skies ahead. Whether it will be maintained when the horizon brightens, whether indeed the horizon will continue to clear—these are questions which no one can answer at this stage.

Can Fascism solve these problems?

Italy's International Economic Position by Constantine E. McGuire (New York, 1926) contains much useful information. C. E. Ferri, *Aspetti economici della vita Italiana* (Milan, 1927); A. Cippico, *Italy: The Central Problem of the Mediterranean* (London, 1926); F. Flora, *La politica economica e finanziaria del fascismo* (Milan, 1923); D. Bonomi, *From Socialism to Fascism* (London, 1924); F. Virgili, *Il problema della popolazione* (Milan, 1924); and H. W. Schneider, *Making the Fascist State* (London, 1929) are all worth mention. The *Annuario Statistico Italiano* is the best convenient source of statistical information; but mention should also be made of *L'Italia economica*, an annual volume edited by R. Bachi and published in Turin.

CHAPTER XXXVIII

THE GOVERNMENT OF SWITZERLAND

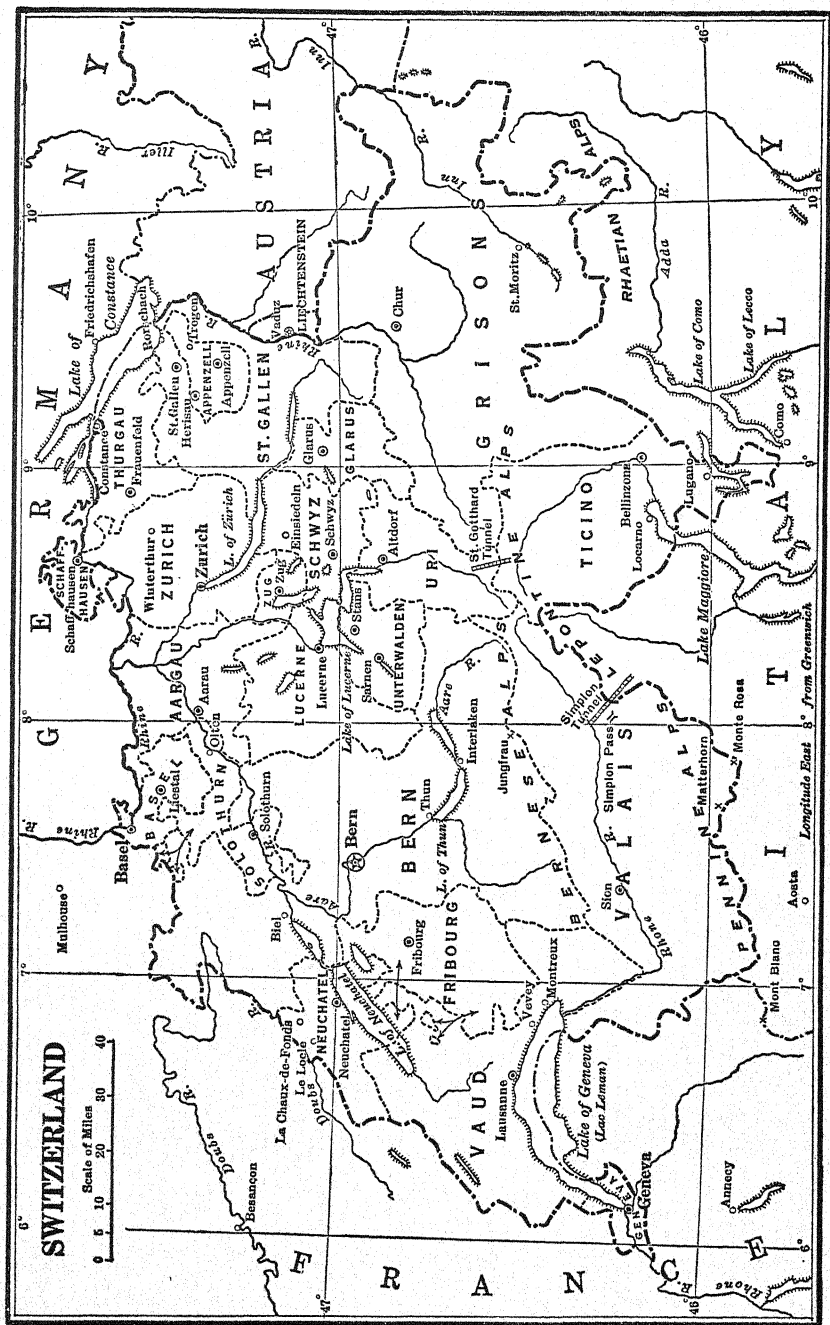
Among the modern democracies which are true democracies, Switzerland has the highest claim to be studied. . . . It contains a greater variety of institutions based on democratic principles than any other country. . . . The most interesting lesson Switzerland teaches is how traditions and institutions, taken together, may develop in the average man, to an extent never reached before, the qualities which make a good citizen—shrewdness, moderation, common sense and a sense of duty to the community. It is because this has come to pass in Switzerland that democracy is there more truly democratic than in any other country in the world.—*Lord Bryce.*

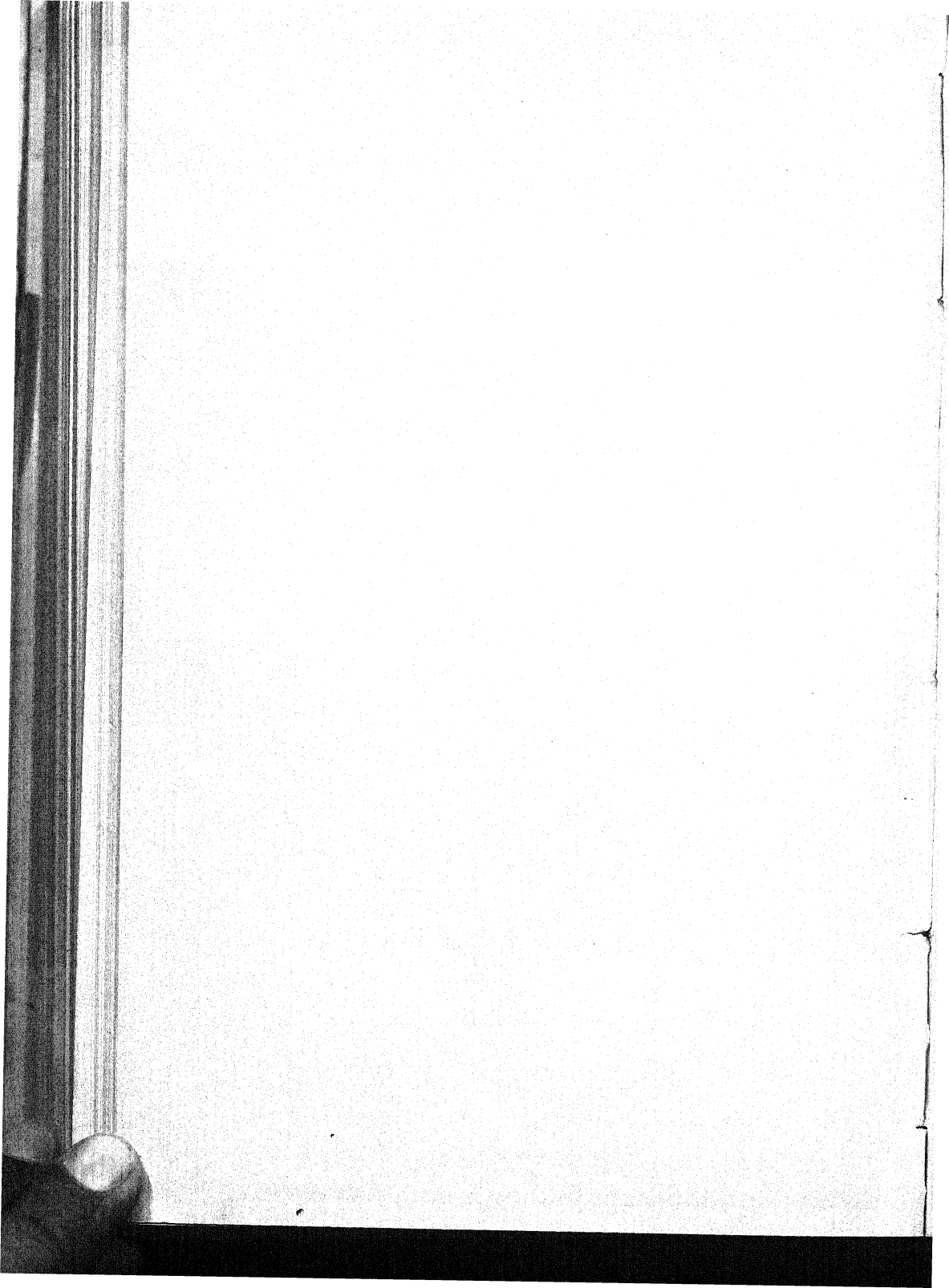
The land of
the Swiss.

Switzerland has about one-third the area of New York state, and about one-third the population. She is thus one of the smallest among European nations, wedged in between three of the largest and most powerful—France, Germany, and Italy. Her people live on both sides of a great mountain chain, having spread themselves over the plateaus above and through the valleys below. Three races, speaking three languages, have been so squeezed together by powerful neighbors that they have grown into one. For the Swiss people are a mixture of three races and have no national language. Most of them speak German, but in some parts of the country French and Italian are the languages of the majority. Nor is there any uniformity of religious belief. Protestants dominate a majority of the cantons while the Catholics outnumber them in the rest. On the face of things, therefore, the Helvetic Republic lacks most of the cohesive forces which are commonly said to make for national solidarity—those which arise from community of race, language, and religion. Nevertheless, and in spite of all this, these four million Swiss are a united people and form a small but coherent nation. What is more they are probably the most patriotic people on the European continent.

Early his-
tory of the
country.

The beginnings of Swiss nationhood are to be found more than six hundred years ago when three small Teutonic settlements, or cantons, situated in the valleys of the Alps, entered into a perpetual league in order that they might be better able to defend





themselves against their enemies.¹ In due course other nearby cantons came into the league until eventually it contained thirteen in all and became known as the Swiss Confederacy. Time and again the country was attacked by its more powerful neighbors, but their attacks were beaten off and by the Treaty of Westphalia (1648) the confederacy was formally recognized as an independent and sovereign state.

It was a rather loose confederation, however, with no permanent central government. Each canton managed its own affairs without interference from the others. Some of them were democracies of the direct type, ruled by mass meetings of all the citizens. When matters of common interest arose, it was the custom to summon a congress or Diet composed of delegates from each canton, but in this Diet everything had to be settled by unanimous consent. The action of a majority did not bind any canton against its will. The delegates met at irregular intervals and there was no federal executive to carry out their decisions. When the Diet was not in session, the confederacy had no official organ. The central government of Switzerland at this time was even more impotent than that of the United States under the Articles of Confederation.²

The old confederacy.

This was the situation in Switzerland when the French Revolution burst upon Europe in 1789. During the general wars which followed this upheaval the Swiss were drawn in, and very disastrously, for the French armies swarmed into the country in 1798. After some fighting they subdued all the cantons and abolished the confederacy. The country was reorganized under a unified government on the French model. It now became known as the Helvetic Republic, with Lucerne as its capital, and was divided into twenty-three cantons, each with a prefect at its head. Ostensibly the Swiss were given control of their own government, but in reality the Helvetic Republic became a vassal of France. The people resented this loss of their ancient independence, and various insurrections broke out, some of which were put down with great severity. When Napoleon came into power he decided to pursue a policy of conciliation and to this end he reestablished the old confederacy and equipped it with a regular federal congress in which all the cantons were represented (1803). This arrangement was more acceptable

The French Revolution and its aftermath.

¹ These cantons were Uri, Schwyz, and Unterwalden. Their federation (1291) was called "The Perpetual League of the Three Forest Communities."

² Robert C. Brooks, *The Government and Politics of Switzerland* (New York, 1918), p. 34.

to the Swiss people and it continued in operation until after the collapse of Napoleon's military power at Waterloo.

Switzerland
after 1815.

The Congress of Vienna, in 1815, permitted the confederacy to add three more cantons to its membership and to resume its old form. Subject to some general restrictions it also allowed the Swiss to reorganize their government as they might see fit, and this they proceeded to do. By this reorganization the cantons regained much of the independence which had been taken from them during the period of French ascendancy. The congress of the confederation was reduced to something like its old impotence, but not entirely so, for it now met regularly and had a makeshift executive. The cantonal executives of Zürich, Lucerne, and Berne took turns in serving as the executive officers of the confederacy, two years at a time. But this revolving executive had scarcely any powers except in time of war, and as the country was now at peace it could accomplish little. In Switzerland, as elsewhere in Europe, the reactionaries ran things according to their own tastes during the years which followed the close of the Napoleonic wars. Both liberalism and nationalism were frowned upon. They made little progress anywhere.

The war of
the Sonder-
bund (1847).

Thus matters drifted along for three decades until the war of the Swiss Sonderbund in 1847. This civil war was caused by the formation of a *bewaffneter Sonderbund* or armed league among the seven Catholic cantons of Switzerland with the purpose of preventing any action of the majority cantons which might lead to a diminution of Catholic rights and privileges. To accomplish this end the Sonderbund was prepared to request intervention by the great Catholic powers, France and Austria. The Protestant cantons naturally became alarmed at this move, and through their control of a majority in the congress of the confederation they ordered the Sonderbund dissolved. This order was resisted, whereupon a lively but brief civil war ensued in which the Catholic cantons were defeated and their league suppressed. The expected intervention by France and Austria did not come because both these countries were themselves on the brink of a revolution which came in 1848.

The con-
stitution of
1848 and
the revision
of 1874.

The civil war of the Sonderbund had one good result; it convinced the Swiss people that their confederation was weak and ought to be strengthened. It also convinced them that Switzerland should have a new constitution with liberal provisions and ade-

quate protection for the rights of minorities. A committee of the congress was therefore appointed to draft a new constitution, and this document was ratified by the cantons in 1848. Its adoption transformed the country from a mere league of independent states into a real federation, but the new constitution did not give the federal government sufficient authority and a movement to increase its powers was soon set afoot. The cantons were reluctant to surrender anything more, and hence the movement for greater federal centralization made slow headway; but eventually the people became convinced of the need for it. The change was accomplished by a revision of the constitution in 1874, and this revised constitution remains in force to-day as the fundamental law of Switzerland, although various amendments have been made to it during the past half century.

The Swiss constitution is not a long document as constitutions go. But it is twice as long as the constitution of the United States, and the arrangement of its contents is somewhat confusing. This is because the various amendments have not been added to the end of the document, as is the American custom, but have been interpolated in the text. As thus amended, the constitution contains more than a hundred articles, many of them dealing with matters of detail which ought not to be put into a constitution at all. It does not contain a separate bill of rights, but various articles dealing with the liberties of the citizen are scattered through the document. Every citizen of a Swiss canton is a citizen of the confederation, but the federal government has the right to determine the conditions under which aliens shall be naturalized in the several cantons. This, rather strangely, it has never done, hence each canton has its own rules. Or, to be more accurate, each commune within each canton has its own rules of citizenship. The alien gets himself naturalized in Thun, for example. This makes him a citizen of the canton of Berne, and also a Swiss citizen. The constitution declares all Swiss citizens to be equal before the law; it guarantees freedom of the press, and freedom of worship; but it does not mention trial by jury.

Its form
and con-
tents.

The Swiss constitution cannot be revised or amended except by majority vote of the people. There are two alternative ways of submitting such questions to the people, one involving action by the federal congress while the other requires the filing of an initiative petition signed by fifty thousand qualified voters. The

How
amend-
ments are
made.

machinery of amendment is not simple but constitutional amendments are on the whole more easy to obtain in Switzerland than in the United States.¹

Nature of
the federation.

Switzerland is a federal republic, a republic of cantons. There are twenty-two cantons and they are declared to be sovereign as far as their sovereignty has not been limited by the federal constitution.² Thus the Swiss constitution, like the American, is a grant of powers. The federal government has only such powers as have been granted to it; the cantons retain all the rest. Like the states of the Union they are paramount within their own reserved fields of jurisdiction. They have their own cantonal constitutions, and subject to three restrictions these constitutions may be framed as each canton sees fit. The three restrictions are that each cantonal constitution must provide for a republican form of government, must be subject to revision or amendment by popular vote, and must not contain anything that is contrary to the federal constitution.

How the
powers are
allocated:

1. Exclusive
powers.

The distribution of governmental powers between the federal and cantonal governments is roughly similar to that in the United States. The federal government has control of foreign relations, but the constitution provides that the cantons (with the federal government's approval) may make certain agreements with foreign countries. The federal government has an exclusive right to send and receive diplomatic agents, to declare war and make peace, and to conclude treaties of an important nature. The Swiss military system, based upon universal training, is under its control. The federal government has control of the postal system; it operates the Swiss railroads (with a few minor exceptions) as well as the telegraph and telephone services. It has charge of the currency and has the exclusive right to issue paper money. It has control of banking; and has power to regulate commerce including the power to levy customs duties, but it has no right to lay direct taxes upon the people. If it needs more revenue than it can obtain from indirect sources the federal government may levy upon the cantons in proportion to their wealth and taxable resources. It

¹ Full details of the alternative Swiss methods may be found in Article III of the constitution. An English version is printed in W. F. Dodd's *Modern Constitutions* (2 vols., Chicago, 1908).

² More accurately there are nineteen cantons and six half-cantons. The latter have cantonal governments of their own, but each has only one representative in the federal council, whereas the other cantons have two representatives.

controls all available water powers, and has a monopoly in two fields of production, namely, explosives and alcohol. These are its exclusive powers.

In addition the Swiss federal government has various concurrent powers, that is, powers which it exercises in common with the cantons. Among these are powers relating to the regulation of industry and insurance, the construction and upkeep of highways, the control of the press, and the encouragement of education. When the federal government exercises a concurrent power, its laws prevail over those of a canton.

2. Concurrent powers.

The Swiss confederation resembles the United States in that the component parts of the union are deemed to possess equal rights. It is also like the United States in having a written constitution wherein certain powers are delegated to the federal government while other powers remain with the several states. But the Swiss confederation is unlike the United States in that federal powers are not, for the most part, carried into operation by the federal authorities. In most cases, when the Swiss federal government enacts a law on any matter within its jurisdiction, it leaves the provisions of the law to be carried into operation by the officials of the cantons. The federal officers merely inspect and supervise. To this general rule, however, there are some important exceptions, including foreign affairs, the collection of customs duties, the management of the telegraphs, the telephone service, and the post office. Even the military system, which will be described a little later, is under the immediate management of the cantons.

The Swiss and American republics contrasted.

All this means that the *federal* government has a relatively small number of administrative officers and employees, while the number of local functionaries is disproportionately large. The legislative power of the Swiss federal government extends over a wider range than that of the government at Washington, but its administrative work does not extend so far. This policy of leaving administration very largely to the cantons has served to make federal centralization less obnoxious to the people. In the United States, as we have found, the strongest popular objection to any increases in the legislative power of the federal government arises from the fact that such increases are invariably followed by the creation of new federal bureaus with a corresponding addition to our already formidable body of federal employees. The American people would more readily give Congress power to regulate child labor,

The small number of Swiss federal officials.

for example, if there were some arrangement whereby the uniform regulations made by Congress would be left to the several states for enforcement after the Swiss fashion. But every increase in the legislative powers of the American federal government involves a further enlargement of the federal bureaucracy. Thus the enactment of the Volstead Law has put thousands of additional enforcement officers on the national pay roll.

The Swiss federal parliament:

1. The upper chamber or council of states.

The Swiss federal government consists of a legislature, an executive, and a judiciary. The federal legislature is divided into two chambers known as the council of states and the national council. The council of states seems at first glance to be an almost exact reproduction of the American Senate, for it contains two members from each regular canton and one from each half-canton—forty-four members in all. But the resemblance is only superficial. In the United States the senators are elected by the people of the forty-eight states for six-year terms; in Switzerland the members of the upper chamber are chosen in such manner and for such terms as each canton may decide. In some they are elected by the people of the canton, in others by the cantonal legislature. The terms vary from one to four years. The two upper chambers, Swiss and American, are also quite unlike in their respective powers. The Senate of the United States has some highly important special prerogatives—the confirmation of appointments, the ratification of treaties, and the hearing of impeachments. The Swiss council of states has no special powers of any sort. Ostensibly it has exactly the same legislative authority as the lower chamber but in actual practice its share in lawmaking is considerably less important.

2. The lower chamber, or national council.

The lower chamber, or national council, is composed of about two hundred members elected from the various cantons under a system of proportional representation.¹ An election takes place every third year. Nominations are made by the various political parties, each of which presents a full or partial list of candidates in every canton. Or, as very often happens, a mixed (*panaché*) list is made up containing candidates from more than one party. Manhood suffrage is the rule. Every male Swiss citizen who has completed his twentieth year is entitled to vote, and any voter who

¹ Berne has the largest representation (34), while Zürich has 27, St. Gall 15, Basle 11, Geneva 9, and Ticino 8. The scheme of proportional representation, which is a very complicated one, is described in McBain and Rogers (see *above*, p. 641), pp. 109-112.

is not a clergyman can be a candidate.¹ Woman suffrage has not yet been granted in Switzerland although a campaign for its adoption is being carried on. The elections are not so keenly contested as in England or the United States and evoke a smaller degree of popular excitement. But they draw quite as large a proportion of the registered voters to the polls. At each of the last three general elections more than seventy-five per cent of the entire Swiss electorate voted, which is a higher average than is reached in American state or municipal elections. On the other hand the people of Switzerland do not make so much fuss about an election as we do in America. This is partly because the political organizations are not so strong and close-knit as in English-speaking countries. They do not have the enthusiasm or the funds for an aggressive campaign. The Swiss, moreover, are politically the least volatile of all people having democratic government. They are not easily stampeded by the catchphrases of a party program. Nowhere do the people think more clearly on political issues or vote with greater intelligence and discrimination.

The Swiss national council holds two regular sessions a year and occasionally meets for a third time in special session. The sessions are short, rarely exceeding four weeks. The council chooses its own presiding officer and he has the usual powers. Members may speak in German, French, or Italian—and they do. You will hear them all in a single debate. This gives rise to no serious practical difficulties because every educated Swiss knows at least two languages and often three or four. German, French, and Italian are recognized as official languages, hence most public documents are printed in all three versions, which is a source of considerable expense.

The arrangement of the chamber is semi-circular, but the members are not grouped by parties as in other European legislatures. They sit by cantons in a neighborly fashion, each member with a little desk in front of him. When members of the ministry (federal council) attend the sessions they take seats on the presiding officer's platform. During the debates the speeches are not made from the tribune, as in the parliaments of France and Germany. Each member speaks from his place on the floor as in English and American legislative bodies. The discussions are calm and businesslike; there is no disorder or uproar, and measures are discussed rather than debated.

Its methods
of work.

Seating and
debates.

¹ A Protestant clergyman may become eligible, however, by resigning from the ministry.

An ideal
chamber.

Many observers have commented upon the excellence of Swiss parliamentary behaviour. It is partly due to the solid, unemotional qualities of the national character. The Swiss legislator, says Bryce, is accustomed to take a middle-class business view of questions, being less prone than the German to talk about abstract first principles, and much less likely than the Frenchman to be dazzled by tinsel phrases. Something must also be attributed to the fact that the tenure of the ministry never hinges upon the outcome of a debate or vote in either of the Swiss chambers. The ministers, as will be seen presently, remain in office whatever happens. There are no interpellations to inflame partisan feeling. Visitors to sessions of the Swiss national council go away with a feeling that the proceedings are dreadfully dull—which they are to anyone who is looking for a flare-up. There are few set speeches. There are no interruptions, no filibusters, no exchanges of “the short and ugly word,” no pounding of a presiding officer’s gavel to restore order. All this makes the Swiss chamber a somnolent place, quite different from the Palais Bourbon or the chamber of the Dail Eireann,—but it also explains why a whole year’s business can be finished in seven or eight weeks.

Occupations of its
members.

The make-up of the Swiss national council is somewhat different from that of an American state assembly. In the present council (elected in 1928) there are 198 members. Of these about one-fourth are lawyers,—in the American House of Representatives the percentage is very much larger (sixty-two per cent). More than twenty per cent are officials of the cantonal or city governments. This holding of a local office and sitting at the same time in the national legislature is permitted in Switzerland. The smallness of the country makes it practicable. Farmers and farm managers constitute thirteen per cent, manufacturers and merchants nine per cent, editors and publishers six per cent, and so on.¹ Thirteen per cent of the members are listed as “professional secretaries,” that is, secretaries of labor organizations or employers’ associations or of political parties. “The Swiss national council thus contains a balanced diversity of professions and occupations, none of them exceeding one-fourth of the membership, and several of them numerous enough to have to be reckoned with on all questions.”²

¹ A table showing the distribution is printed in R. C. Brooks, *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930), p. 36.

² *Ibid.*, p. 47.

The process of lawmaking in Switzerland deserves a word for it presents some interesting features. Every bill is introduced simultaneously in both chambers. This differs, of course, from the practice in other countries, but it has the merit of ensuring that a bill will have independent consideration by two groups of legislators. In the United States, if a bill originates in the House of Representatives, and is killed in committee, it never gets before the Senate at all. Or, if introduced in the Senate, and rejected there, it does not reach the House calendar. In Switzerland a bill may be under discussion in both chambers on the same day.

Any member of either Swiss chamber may introduce a bill, but most of the important measures are brought in by the ministry (federal council). They have been carefully framed before the opening of the session. Either chamber, moreover, may by resolution request the ministers to prepare a bill on any specified subject, and this is not infrequently done. Bills of the type known as private bills and private members' bills in England, or as local bills in the United States, are relatively few. This is largely because the Swiss have made ample provision for taking care of this ancillary legislation by means of executive decrees (*Verordnungen*).

The Swiss chambers place very little emphasis upon committee work. Bills, when introduced, are not ordinarily referred to committees, although important measures may be so referred when either chamber orders this to be done. The discussion of a bill usually begins on the floor and in any event it must pass both chambers in the same form before it can become a law. If either one of them rejects the measure, or passes it with amendments, a conference is held between representatives of the two bodies and an agreement is usually obtained in this way. As a matter of practice the upper chamber does not often stand out against the will of the lower house. At times the council of states has insisted on defeating measures which the national council has favored, but such action is becoming less common. The Swiss council of states does not possess the power or prestige in lawmaking that the American Senate commands. On the other hand it is more influential than the Senate of the French Republic. Unlike most upper chambers, moreover, it has not acquired a reputation for conservatism. No one ever speaks of the Swiss council

Features in procedure:

1. The simultaneous introduction of bills in both chambers.

2. Ministerial measures.

3. Little stress on committee work.

of states as a citadel of reaction or a brake upon the wheels of progress.¹

Joint sessions of the two chambers.

Ordinarily the two chambers sit separately, each in its own hall of the capitol at Berne. But on certain occasions and for certain purposes they meet in joint session. In joint session they elect various high officials of the confederation, namely, the members of the federal council or ministry, including the President of that body, the chancellor, the judges of the federal court, and the commander-in-chief of the Swiss federal army. In joint session, too, they decide certain conflicts of jurisdiction between the federal authorities, although some of this authority is now devolved upon the new federal administrative court which was created by law in 1928.² Pardons are also granted by the two chambers sitting together, a joint session being held twice a year for this purpose. And the two chambers may, if they choose, meet together for the determination of various other matters set forth in the constitution, in as much as the constitution grants many powers to the Swiss parliament as a whole, leaving it to the two Houses to decide whether they shall act jointly or concurrently. The general practice, however, is to deal separately with all business except the matters above indicated.

The Swiss collegial executive.

The executive in Swiss government is unique. Virtually all other countries have single executives—a king, emperor, president, or governor-general, as the case may be. Switzerland has a plural executive which consists of a federal council, or ministry of seven members, elected by the two legislative chambers sitting together.³ The choice is made immediately after each general election. They hold office for three years unless the lower chamber is dissolved in the meantime. In that case a new election is held when the legislature reconvenes. The constitution does not require that members of the two chambers shall choose the federal ministers from their own ranks, but in practice this is always done. On being chosen, the federal councillors vacate their seats in the legislative chambers and special elections are then held to fill the vacancies.⁴

¹ The age of its members averages about 59 years, while that of the national council averages about 56 years.

² *Below*, p. 747.

³ Not more than one member can be chosen from a single canton. By usage the two largest cantons, Berne and Zürich, are always represented in the federal council.

⁴ Although the federal councillors may not remain members of either chamber they are entitled to sit alongside the presiding officer and to speak (but not to vote) in both chambers.

Reëlections to the federal council are common, and when a councillor is once elected he usually remains in office as long as he desires. This permanence of tenure distinguishes the Swiss federal council from all other European ministries.

The President of the Confederation.

Every year the two legislative chambers, in joint session, elect one member of the federal council to be chairman of that body with the title [President of the Swiss Confederation.] But apart from presiding at meetings of the federal council and giving the casting vote in case of a tie, he has no constitutional powers of any importance. He does not appoint officials, or veto bills, or carry on diplomatic negotiations. He is merely the titular head of the confederation and represents it on occasions of ceremony. But by custom he has become a sort of general overseer, responsible for inspecting the work of the various administrative departments, and the federal council may authorize him to act in its name. This is sometimes done in emergencies, but no act that the President performs in this capacity is valid until approved by the council. [He is in no sense a prime minister, therefore; he does not select his colleagues, and has no authority over them. His legal powers are virtually the same as those of the other councillors although he sits at the head of the table.]

The two chambers also elect one of the federal councillors to be Vice President of the Confederation. He presides when the President is absent and as a rule he is promoted to the presidency in the following year. The constitution does not permit a retiring President to succeed himself, or to be elected Vice President, neither does it permit a Vice President to be reëlected. Thus it virtually compels rotation. On the other hand it does not preclude a second term if at least one year intervenes. Hence a minister who remains long enough as a member of the federal council is likely to have a second, or even a third, presidential term.

The Vice President.

The chancellor of the confederation is chosen by the two chambers sitting together, but he is not a member of the federal council. He is a sort of general secretary for the Swiss federal government, keeps all the records, countersigns various laws, resolutions, and other official documents, and has charge of the holding of elections. His duties are largely clerical and routine, with little political significance. The office of chancellor in Switzerland is quite unlike the chancellorship in the new German government or the office of lord chancellor in Great Britain.

The chancellor.

The federal council as a ministry.

What are the functions of the federal council as chief executive of the Swiss Republic? They are not wholly executive in their nature, but legislative and judicial as well. The Swiss government is not constructed, like the American, on the principle of checks and balances. The federal council is a ministry in that it serves as the executive committee of the Swiss parliament. It is controlled by the latter and must obey all resolutions passed by the two chambers. [If the councillors find themselves outvoted on any matter they do not resign, as in France or England; they merely pocket their pride and obey the will of the legislative bodies with as good grace as they can muster.] The Swiss see no reason why ministers, whose general work is satisfactory, should be turned out of office because they and the chambers are of a different opinion on some single proposition.

The Swiss theory of responsibility.

How the plan operates.

As a matter of fact, however, the federal council is not often required to execute a graceful backdown at the behest of the chambers. This is because the councillors are seasoned politicians, all of them. They have themselves been members of the legislature. They know how legislators feel, and what they are likely to do. As party leaders, moreover, they have a good deal of influence upon the members of their respective party groups in the two chambers. Hence, although the federal council must always bend to the will of the legislature when the latter insists, the actual situation is that the council does not proceed until it has measured its own strength. In important matters it usually obtains its own way or at least arranges a compromise.

Ministerial leadership.

Leadership there must be in all lawmaking bodies, and in Switzerland the federal council is the only agency through which this leadership can be provided. On various occasions the Swiss chambers have reposed an extraordinary degree of confidence in the council's leadership and have endowed it with prætorian authority, as for example in 1914 when they conferred upon it "unrestricted power to take all measures for the security, integrity and neutrality" of Switzerland during the world war. The chambers even went so far as to give the council a free hand in the matter of expenditures for this purpose.

Functions of the federal council:

The federal council, in the words of the Swiss constitution, is the supreme executive authority of the confederation. [In the exercise of its supreme executive powers, it conducts the foreign affairs of the confederation, promulgates the laws, controls the federal

army, and appoints all federal officers other than those who are chosen by the two chambers in joint session. It prepares each year the federal budget of estimated receipts and proposed expenditures. This budget is then laid before the chambers by the federal councillor or minister who is in charge of the department of finance. It is explained and defended on the floor by him. After the budget has been voted by the two chambers, the federal council assumes the duty of collecting the revenues and supervising the expenditures. The council also presents an annual report giving an account of its work in both foreign and domestic affairs, and this report is carefully gone over by the legislative chambers.

1. Executive.

The responsibility of the ministers for their executive acts is kept direct and continuous by the use of the interpellation. They may be interpellated in either chamber, on any subject, at any time. These queries, addressed to a designated member of the council, are formally answered as in the parliaments of other continental countries, and after the answer has been given the interpellator is entitled to say whether he is satisfied with it or not. But no vote is taken on the matter when he expresses dissatisfaction with a minister's reply, and even a discussion of it is not common, although either chamber has the right to use the occasion as the prelude to a debate if it so desires. [The Swiss interpellation does not differ essentially from the ordinary question which is asked and answered during the question-hour in the British House of Commons.¹]

Interpellations on executive matters.

The ministers, as has been said, have also some legislative functions. They prepare bills for consideration by the two chambers, sometimes in compliance with specific requests made by the latter. These requests are made by resolutions known as "postulates." All measures are prepared by experts in bill-drafting who are regularly employed for this purpose. [On the other hand, when bills are introduced by private members of either chamber they are referred to the ministers for their opinion before being acted upon. Thus no measure is ever enacted by the Swiss parliament without its being first considered by the executive branch of the government.]

2. Legislative.

This does not mean, of course, that the ministers have a veto upon legislation, or anything approaching it. The ministers sometimes present, at the request of the chambers, a bill that does not

¹ See above, pp. 172-174.

meet their own approval, and bills of this type have occasionally been passed. On some occasions, again, the chambers have enacted private members' bills on which the ministers have reported adversely. The federal council or council of ministers, in a word, is expected to participate actively in the lawmaking process but not to feel hurt when its advice is disregarded. As someone has said, the Swiss federal councillor is like a lawyer or an architect in that his advice is sought and usually heeded; but he is not supposed to throw up his job in a huff whenever his employer insists on having something done differently.

The ordinance power.

✓ The ordinance power of the Swiss federal council calls for comment. The federal council or ministry has no general power to issue ordinances or decrees in elaboration of the general laws. It does not possess the authority which is exercised in this field by the French ministry. On the other hand the Swiss parliament, by resolutions passed from time to time, has given the ministers authority to issue orders and decrees covering routine and minor matters of various sorts. In this way the two chambers have relieved themselves from the necessity of considering large numbers of minor, special, or private measures. This ordinance power of the federal council has been steadily growing. It underwent an enormous expansion during the world war and the effects of this expansion are still apparent.

3. Judicial.

Finally, the Swiss federal council has some powers of a judicial nature. Originally it decided controversies on points of constitutional law and also served as the chief administrative court of the confederation, but many years ago the federal courts took over its jurisdiction in constitutional cases. It still retains some jurisdiction in cases arising under administrative law, although it has surrendered part of this authority to a new administrative court which was created in 1928. A constitutional amendment in 1914 authorized such a court, but there was a long delay before the Swiss parliament passed the necessary statute to establish it. The new court has two judges to start with.

The council as a cabinet.

Like the ministries of other countries the Swiss federal council has both collective and individual functions. It holds two regular meetings a week, with special meetings when the exigencies of public business demand. Its sessions are secret, and decisions are reached by majority vote. The President has a vote on all questions and when the council is deadlocked he has an additional vote.

In summary, the duties of the federal council can be compressed into three or four lines of print by saying [that it decides all matters of executive policy, prepares business for the legislative chambers, approves règlements for carrying out the laws, and performs the collective functions which are given to ministries in other European countries.]

But the Swiss federal council is not really a cabinet in the common acceptation of the term. [The term cabinet implies a degree of party solidarity which the Swiss council does not possess.] Its members are not drawn from a single political party or from a single bloc of parties. They are not united on any political program. They are not chosen to carry out party pledges or to serve the interest of any political party. They do not stand unitedly on any platform or profess a common party allegiance—as ministers do in England and members of the cabinet in the United States.

It is not a cabinet in the usual sense.

On the other hand these federal councillors or ministers in Switzerland are very far from being non-partisan. They have been, and continue to be, active politicians. In fact they are often party leaders, and sometimes of different parties. Hence they may, and often do, hold divergent views on questions of public policy. Not only that but they sometimes express their disagreements publicly—by speaking in the legislative chambers on opposite sides of a question. This, of course, could never happen in England or in France. Differences of opinion in the Swiss federal council do not lead to anybody's resignation. When they arise they are merely left to the legislature for adjustment.

No cabinet solidarity.

One should not derive, from the foregoing paragraph an impression that disagreements within the Swiss federal ministry are part of the daily routine. They are the exception, not the rule. In matters of routine administration the federal council displays a good deal of cohesion—outwardly at any rate. It does not ordinarily lay measures before the legislature until it has whipped them into such shape that all the ministers are agreed in support. Then the chambers, in most cases, accept the council's proposals with very little change. Not always, however, for occasionally the council's bills are rejected or severely amended by the legislators. But when this happens the federal councillors do not hand in their seals of office as in England or in France. They act just as members of the American cabinet do when Congress rejects some measure which they have strongly favored. They outwardly express their

But internal disagreements are rare.

regret and disappointment in polite and restrained language, while inwardly exhausting the potentialities of a profane vocabulary. But in both countries they continue at their posts, draw their salaries, keep their tempers, and try to carry out the will of the people as expressed by the legislature.

A strong feature of Swiss government.

It has been said that the federal council, in thus combining responsibility with permanence, is a unique feature, and one of the notable excellences of the Swiss system. It provides a plural executive with the merits of a unified executive. [It enables Switzerland to keep in office her ablest statesmen irrespective of their party affiliations.] A federal councillor is not retired to private life because his party happens to suffer defeat at the polls. Under the English, French, and American systems of government the ablest administrator in the land is debarred from holding high office if his political party happens to be undergoing an eclipse. [That may be good party politics but it is not common sense, and if party government is to endure it must become reasonably rational.]

How it ensures stability.

The Swiss system has the additional merit of assuring a greater continuity of executive policy than is normally possible in other countries. In England and in France this continuity is to some extent obtained by giving each executive department a staff which does not change when the cabinet falls; but in Switzerland the tradition of permanence covers the head of the department as well. On the other hand the Swiss system has the potential defect of tending to professionalize the whole administrative branch of the government from top to bottom. Thus far it has not created a bureaucracy of serious proportions; but the danger is assuredly there. When everybody connected with the executive branch of the government (from the highest official to the lowest) is assured of a relatively permanent tenure there is always a danger of official indifference, discourtesy to the public, and of methods getting into a rut. There is some truth in what that rough diamond of a democrat, Andrew Jackson, once said, namely, that "every man who is in office for twenty years or so gets to thinking that he has a vested right in it and that it ought to descend to his children." To make sure that an administration will always regard itself as the "servant of the people" and will adapt itself quickly to changed conditions, there should be provisions for a periodical infusion of new blood, especially at the top. Switzerland, as it happens, has managed to combine permanence with progressiveness in its

An offsetting danger.

federal administration, but it is by no means certain that other countries could adopt the Swiss system and count upon achieving the same results.

In addition to its collective functions the federal council has work which its members perform individually. Each of the seven councillors, including the President and the Vice President, is the head of an administrative department. These seven departments represent the usual division of administrative work as one would expect to find it in a small country. Their designations are: (1) political, (2) finance and customs, (3) justice and police, (4) interior, (5) military affairs, (6) posts and railways, and (7) public economy (i.e., agriculture, industry, and commerce). The "political" department includes not only foreign affairs but naturalization, federal election laws, emigration, and some other matters. It is usually taken under the personal supervision of the President, which means that its head changes every year. Each department is divided into bureaus or services; but the number of federal officials in Switzerland (apart from the officials of the railroad administration) is relatively small. The reason for this has been already explained.¹

Individual work of the councillors.

In recent years, however, the number of persons on the federal pay roll has considerably increased and there has also been a striking growth in the number of local officers. There are now said to be more than 150,000 persons on all the public pay rolls of Switzerland (federal, cantonal, and local), or about four per cent of the population. This is a larger percentage than we have in the United States, but the difference is mainly due to the wider spread of public ownership in the Swiss communities. These public officials and employees in Switzerland are well-organized into local unions and a national federation, which makes them quite influential politically.

The large number of public employees.

Switzerland has a competitive civil service system but it does not cover the whole range of subordinate federal officials nor does it in all cases operate as a check upon the discretion of the appointing authorities. The federal council, in making selections for important positions, may disregard the results of the competitive examinations and sometimes does so. It is said that a good many appointments are treated as patronage by the councillors, and there seems to be some basis for this assertion; but the evil has not

The Swiss civil service system.

¹ See *above*, p. 733.

assumed serious proportions. One reason for this is that there are no sinecure jobs in the Swiss civil service. Public employees in Switzerland have to work hard and until a few years ago they were badly underpaid. In 1925, however, a comprehensive *Beamtengesetz* was passed, with provisions for a general increase in the salaries of public officials and a detailed classification of these officials into twenty-six categories. One of the interesting features of this law is the provision that married officials shall be paid at higher rates than unmarried, and that an additional allowance shall be paid for each dependent child. Another feature, well worth copying in the United States, is the provision for salary adjustments according to higher or lower costs of living in that part of the country where the public official resides.

The Swiss
judiciary.

Turning to the judicial system of Switzerland, not much need be said. There is only one federal court—the *Bundesgericht*, it is called. It consists of twenty-four judges (and nine substitute judges) elected for a six-year term by the two legislative chambers in joint session. But the practice is to reelect these judges on the expiry of their terms so that they virtually hold office as long as they desire it. For the trial of civil cases the court sits in three sections, to each of which a specified class of controversies is assigned. It has original jurisdiction in controversies arising between the confederation and the cantons, and in some other cases. It has appellate jurisdiction in cases which come up from the cantonal courts. In criminal matters it deals with accusations of treason against the confederation and with various other offenses against the federal laws. Under certain circumstances other criminal cases may be sent before the court by the cantonal authorities. For the trial of crimes the federal court is divided into four chambers, one of which sits as a *chambre d'accusation* and functions as a grand jury. In all criminal trials before the federal court the accused is entitled to have issues of fact heard and determined by a jury of twelve—as in England and America. By far the largest number of cases, both civil and criminal, are handled in the cantonal courts and do not reach the federal court at all.

Declaring
laws un-
constitu-
tional.

In the matter of ultimate authority the Swiss supreme court differs significantly from the American. In Switzerland the federal supreme court can nullify a cantonal law if it finds the same to be in conflict with the federal constitution or with federal laws, but it has no authority to declare a federal law unconstitutional. On

the contrary the Swiss constitution expressly declares that "the court shall enforce all laws enacted by the federal parliament."¹ It is thus debarred from assuming the judicial supremacy which the Supreme Court of the United States has acquired. This fact is of some significance because it is sometimes argued that no federal constitution can function smoothly unless there is a supreme tribunal with power to safeguard its provisions against breach by an avaricious legislature. Swiss experience does not show this argument to be sound under all circumstances.

Switzerland has long maintained a system of administrative law but until a few years ago there was no federal administrative court. When controversies arose between the federal government and the citizen, involving questions of administrative law, the issues were determined in the first instance by the federal council, that is, by the ministers. If the ruling of this body was challenged, an appeal could be taken to the two legislative chambers sitting in joint session; but this slow and clumsy arrangement was long regarded as unsatisfactory. After prolonged discussions an amendment was added to the federal constitution in 1914 authorizing a regular administrative court to be provided in such form as the Swiss federal parliament might determine. But the world war, which entailed a general mobilization in Switzerland, afforded the chambers an excuse for postponement and even after the war came to a close it took ten years before the statute providing for the new court was finally passed. The court has now started to function but the statute gives it a rather limited authority and already there is a movement to enlarge its jurisdiction. Controversies on matters of administrative law are not very numerous in Swiss federal government, however, because the great majority of administrative officials are agents of the cantons and hence, when disputes with citizens arise, these are brought before the cantonal administrative courts.

Administrative law in Switzerland.

The new administrative court.

SWISS POLITICAL PARTIES

One might expect to find many party groups in Switzerland, more than in France, Germany, or Italy. For Switzerland has a population which is very diversified in race, language, religion, and economic interest. There is a peasantry in the rural cantons and a proletariat in the industrial ones. There is a strong middle

The groundwork for the party system.

¹ Article 113.

class, and a transient population of sizeable proportions due to the tourist trade. It is often said that half the Swiss people live off the tourist, which is, of course, a palpable exaggeration, although the business of caring for visiting mountain-climbers is by no means a negligible industry. Moreover, Switzerland is full of traditional antipathies and animosities (particularly those arising from the Sonderbund of 1847) which have not yet been wholly allayed. In no country would there seem to be, at first sight, so much reason for the division of the people into factional groups. Offhand, the student of comparative government might hopefully turn to Switzerland as the classic land of party disintegration.

The four groups.

But he would not find it so. Switzerland has fewer party groups than any of her neighbors. There are only four Swiss "political parties" of any consequence. In the lower chamber ninety per cent of the members belong to these four groups. As in other European countries they range from the Right to the Left, from conservatism to radicalism, but with the central groups usually dominant. The four chief groups call themselves Clericals (or Catholic Conservatives), Agrarians (or Peasants' party), Independent Democrats, and Social Democrats. The third group has usually been the strongest although its lead over the Social Democrats is not now very large.

Evenness in party strength.

Party lines in Switzerland do not generally coincide with those of race, language, or religion—although the Clerical party naturally draws its chief strength from the Catholic cantons. The Social Democrats, as is equally natural, come chiefly from the industrial cities. Some changes in party strength appear from time to time, but the ups and downs since the close of the world war have been by no means so abrupt as in other European countries. For example, the strength of the Independent Democrats in the national council has ranged between fifty-five and sixty members after each of the last four elections; while that of the Clericals and the Social Democrats has stayed between forty and fifty members each. At present the figures are fifty-eight, forty-six, and fifty respectively, the Peasants' party occupying fourth place with thirty-one. In the whole national council of one hundred ninety-eight members there are only thirteen who belong to minor factions. With three parties so evenly divided (which is partly a result of the system of proportional representation) the federal

government is carried on by compromise rather than by bloc supremacy. At a pinch the two strongest parties could command a majority, but under normal conditions any bill must have some support from at least three of them in order to pass the lower chamber.

And in any case the Swiss are not ardent partisans. Their intense national patriotism seems to preclude the ardent allegiance to a political party that one finds elsewhere. The people are genuinely interested in public affairs, as is shown by the large percentage of the registered vote polled at federal elections; but they are not to the same extent concerned about the triumph or defeat of the parties to which they professedly belong. They are not out for each others' heads. Personal ambitions have counted for little in the politics of the country. This happy situation, however, seems to be undergoing a gradual change. The Social Democrats in Switzerland, as in Germany, are stressing the principle of "allegiance to a cause." Party organization has tightened during the past decade and professional organizers, known as party secretaries, have become more in evidence as well as busier. The old order seems to be slowly on the wane.

The Swiss
as partisans.

THE INITIATIVE AND REFERENDUM

Switzerland is the ancestral home of the initiative and referendum.¹ In one form or another these institutions of democracy have been used by the Swiss cantons for a very long time, and it is from Switzerland that they have spread, along the major routes of democratic infection, to various other countries including the United States. They are perhaps the most remarkable among all the institutions that democracy has produced, for they afford a means of lawmaking without the intervention of a legislative body, in other words a channel of direct action by the people. Nothing in the Swiss political system is more instructive to the student of modern democracy, for as Lord Bryce has said, "it opens a window into the soul of the multitude."

Direct legis-
lation.

The initiative is an arrangement whereby a specified number of voters may prepare the draft of a law and may then demand that it either be adopted by the legislature or referred to the people

A definition
of the
terms.

¹ The claim is often made that the referendum originated in the United States. And it is true that in America it was first utilized in the adoption of state constitutions after the Revolution. But the referendum was not extended to ordinary lawmaking in the American states until the close of the nineteenth century.

for acceptance at a general or special election. If approved by the required majority it then becomes a law. The referendum is a device whereby any law which has been enacted by the legislature may be withheld from going into force until it has been submitted to the people and has been accepted by them at the polls. Thus the two agencies supplement each other; the intent of the one is positive—to secure the enactment of some measure which the legislative body has ignored or declined to pass; the intent of the other is negative—to provide a popular veto upon something which the legislature wants but which the people do not. As a rule the initiative and referendum go together, but they need not be conjoined, for either can exist alone.

They are ancient institutions.

Americans are accustomed to think of the initiative and referendum as novelties in government. They are commonly spoken of as "the newer agencies of democracy." But they are not new or modern in any sense. They are as old as democracy itself. All primitive government was either despotic or direct, that is, the king settled all matters of public policy for his people or the people did it themselves without the intervention of representatives. When the Roman historian, Tacitus, visited the Germanic tribes he found them settling all weighty matters by common voice in mass meetings of all the tribesmen. But with the growth of population, and the increasing complexity of civic relations, the practice of direct legislation gradually died out. Representative bodies arose—as in England, for example—and these parliaments or councils were supposed to represent the desires of the people in the proposing and enactment of the laws. Alone in some of the little Swiss cantons, through the agency of the *Landesgemeinde*, the practice of direct legislation survived and still continues. Here among the mountains, shut off from close contact with the outer world, a primitive institution was carried along through the ages and into our own day.

But outside Switzerland they disappeared for a time.

Their spread during the nineteenth century.

During the first half of the nineteenth century the referendum became a regular part of the lawmaking process in most of the cantons, although representative bodies were also functioning. In 1874 it was extended to federal laws by a constitutional amendment which provided that any 30,000 voters might by petition require the federal legislature to withhold a measure until the people had an opportunity to pass on it. The initiative was extended in the cantonal governments almost simultaneously and was also

adopted in the federal constitution as a means of proposing constitutional amendments; but it does not yet apply to the making of federal laws.¹ This, however, is not a matter of much practical importance because the people, when they desire something that would ordinarily be enacted in the form of a statute, can propose it and adopt it in the form of a constitutional amendment. They have done this on several occasions.

The procedure used by the cantons for putting the initiative into effect may be briefly described. Some group of individuals or some organization prepares the draft of a law. If the cantonal council is not willing to act favorably on it, a petition is circulated, and the requisite number of signatures gathered. The petition, accompanied by the draft, is then filed with the proper authorities of the canton and if they find the papers to be in proper form the question of accepting the measure is placed upon the ballot for the voters to decide. Meanwhile copies of the proposed law are printed and distributed to the people. Most of the cantons do not hold a special election whenever an initiative petition is filed; the more common practice is to submit them all (together with measures on which the referendum has been invoked) at regular elections which come on stated dates once or twice a year. In Zürich, for example, there are always two pollings—one in the spring and one in the autumn.

How the initiative functions.

In the case of the referendum the usual course is to provide that no cantonal law (except one of an emergency or a merely routine character) shall go into effect for a certain interval after the cantonal council has enacted it. In certain cantons, where the obligatory referendum has been established, this interval extends to the next election, and no petition is necessary to put measures on the ballot. Every law passed by the cantonal council (except emergency and routine measures) must be submitted and no law be-

The referendum in practice.

¹ The present status of the initiative and referendum in Switzerland may be summarized as follows: *The Initiative* is used (a) in all the cantons except Geneva for the revision or amendment of the cantonal constitution; (b) in all the cantons except Lucerne, Valais, and Fribourg for the proposing of new laws; (c) in the confederation for proposing constitutional amendments (but not for proposing laws). *The Referendum* is used (a) in all the cantons on amendments to the cantonal constitution; (b) in all of them except Fribourg for the adoption of ordinary laws; (c) in the confederation for the adoption of constitutional amendments proposed by the federal legislature, and (d) in the confederation for ordinary laws where duly invoked by petition. But some of the cantons have the *obligatory* referendum, that is, all laws passed by the cantonal council must be submitted to the people, while others have the *optional* referendum, in other words a measure is not submitted unless a prescribed number of voters petition for such action.

comes operative until the people have accepted it at the polls. But in the other cantons no measure is submitted unless a specified number of the voters petition to have this done, and if no petition is filed within a certain time the law automatically goes into effect. If, on the other hand, any measure is petitioned against, and is submitted to the voters, an adverse majority at the polls will render it null and void. In the case of any law passed by the federal legislature the petition for a referendum must have 30,000 signatures, or, alternatively, the referendum must be requested by the authorities of at least eight cantons. The law, before the people vote on it, must be printed in the various languages (French, German, and Italian), and enough copies must be provided for all the voters.¹ Initiative and referendum elections are always held on a Sunday.

Extent to which direct legislation has been used.

The process of direct legislation has been used to a considerable extent in the various cantons, more in some than in others. On a nation-wide basis it has naturally been used to a much more limited extent. During the ten years 1918-1928 only twelve proposed amendments to the federal court were put forward by means of the initiative and submitted to the people. Eleven other amendments were submitted by the federal parliament.² It should be mentioned, by the way, that the adoption of an amendment to the federal constitution, no matter how the proposal may be initiated, requires not only a majority of the voters as a whole, but a majority by the cantons as well. The referendum was invoked, during these ten years on only six federal laws.

Nature of the questions submitted.

The matters submitted to the people in Switzerland during the past half century have been of considerable variety; they dealt not only with broad questions of public policy (such as government ownership of the railroads and the reorganization of the army), but in many cases with matters of relatively minor consequence such as the licensing of commercial travellers and the regulation of trade in animals. On one occasion nearly four hundred thousand Swiss voters were asked to decide whether they would approve an appropriation for the salary of a secretary at the Swiss legation in Washington. By a large majority they voted No. At the other

¹ When a law is submitted to referendum it must also be printed in Romansch⁴ (or "ladin" as the French more often call it). This is a low-Latin language spoken in the valleys of the Grisons (Gräubunden) by about 40,000 persons.

² R. C. Brooks, *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930).

extreme was the referendum in 1920 on the question of joining the League of Nations. The verdict in this case was an overwhelming Yes. Switzerland, by the way, was the only nation in Europe that entered the League by vote of its people.

As to the merits and defects of the system there is a difference of opinion among Swiss as among Americans. In neither country is any serious fault found with the use of the referendum for amendments to the constitution. Nor is there widespread objection to the use of the initiative as a means of proposing constitutional amendments. The controversy relates, in the main, to the employment of the initiative and referendum as agencies of ordinary lawmaking. This controversy has brought forth, both in Switzerland and in the United States, a long list of forceful arguments on both sides. It is urged (and denied) in both countries that direct legislation weakens the responsibility of the legislature, lowers its prestige, and causes its membership to deteriorate in quality. In Switzerland it is admitted that there has been some decline in political standards during the past fifty years, but the friends of direct legislation hasten to explain that it is due to other causes. It is often said that direct legislation retards political, social, and economic progress because the people are more conservative than their representatives. Lord Bryce speaks of this as the "most comprehensive and also the vaguest" objection to direct democracy. In Switzerland, it is true that the initiative and referendum have been used conservatively; but this may prove nothing more than that the Swiss are a highly-intelligent, cautious people who are not in the habit of swallowing panaceas because they are new. When in doubt they usually vote No, which is the sensible thing for people to do.

Merits and
defects of
the system.

Objection is also raised that the total vote cast by the people on ordinary laws in the cantons, and on constitutional amendments in the confederation, is often rather small.¹ Hence it is said, the decision is not made by a majority of the people but by a minority. There is some basis for this assertion, and there is bound to be, for when voters are frequently called to the polls (twice a year or oftener), many of them develop electoral fatigue and stay at home. Some cantons have tried the plan of making voting compulsory,

Size of the
vote.

¹ On the amendments to the federal constitution, submitted during the years 1919-1921, the total vote was less than thirty-five per cent of the registered electorate.

and apparently to good advantage although the obligatory measures have not been rigorously enforced. One result of compulsory voting, as Swiss experience has shown, is that many voters merely come to the polls and drop blank ballots in the box. Much depends upon the importance of the measures submitted, and on the degree of popular interest which they evoke. A question which has any relation to race, religion, or class always brings out a much larger vote than one relating to political or financial routine.

The varied lessons of Swiss experience.

All the stock objections to the initiative and referendum are in part verified, and in part disproved, by Swiss experience. People vote on questions which they do not understand. The peasant often goes to the polls and marks his ballot on some complicated question without any comprehension of what it is all about. Prejudice and ignorance decide the issues in some cases. The system involves a lot of expense and puts the people to inconvenience. On the other hand it has been a useful instrument of public education, for although many voters go uninformed this cannot be said of the most of them. The patriotism of the people has been stimulated by a sense of popular responsibility. Direct legislation, moreover, has provided the Swiss people with a check upon legislative bodies which otherwise would be entirely lacking, for there is no system of executive veto in Switzerland as in America. In any event the great majority of the Swiss people appear to be satisfied with their system of direct legislation and there is no likelihood that they will abandon it. A careful American student of the matter has given his opinion that the advantages in Switzerland outweigh the defects.¹

LOCAL GOVERNMENT

Government in the cantons.

Each Swiss canton has its own constitution and its own frame of government. A few are of the *Landesgemeinde* type, that is, they are governed by what Americans would call an enlarged town meeting. A general assembly of all the adult male citizens in the canton is called once a year to decide all important matters of cantonal policy. This meeting also elects a small council of five members which, like the board of selectmen in a New England town, functions through the year and performs such duties as the general assembly assigns to it. But most of the cantons are not of this type. They have no general assembly of the citizens. Instead

¹ R. C. Brooks, *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930).

the voters elect a grand council, as it is called. This grand council meets frequently and serves as a cantonal legislature—subject, of course, to the use of the initiative and referendum. The election of the council is in most cases conducted according to the principles of proportional representation. The people of these cantons also elect an administrative council, usually of five or seven members, and this body serves as the local executive. The government of the cantons is simple and effective.

Within the cantons are the cities, towns, and villages which are known as communes no matter what their size. There are more than 3,000 communes in Switzerland. In the smaller communes the town-meeting type of local government prevails; but in the larger ones the people elect municipal councils. In addition to these regular communes there are a great many districts which have been created for special purposes—for example, the school districts which in Switzerland are known as “school communes.” Local government in Switzerland draws a great number of citizens into direct contact with public affairs. It has an educative value, exemplifying Tocqueville’s aphorism that “local institutions are to liberty what primary schools are to science; they bring it within the people’s reach; they teach men how to use and how to enjoy it.”

The communes.

THE MILITARY SYSTEM

A word ought to be added with reference to the military system of Switzerland, for it has commanded favorable attention in other countries. The Swiss constitution provides that every citizen is “bound to perform military service”; on the other hand the confederation is forbidden to maintain a standing army. In consonance with these two provisions a system of universal military training has been devised and the present legislation relating to it was adopted by the people at a referendum in 1907. The work of training sometimes begins in the schools. At the age of nineteen every male citizen is examined as to his fitness for military service—the test is both physical and mental. Those who fail to meet the requirements are then given specialized physical or mental training to overcome their defects if they can be overcome. Those who satisfy the requirements are sent to a recruit school for a short period of intensive training. This lasts from sixty-five to ninety days according to the arm of the service (infantry, cavalry, artillery, aviation, etc.).

The citizen soldiery.

Service at
various
ages.

From the age of twenty to the age of thirty-two the citizen is then enrolled in the *Auszug* or line army, and during this interval he undergoes short periods of training at one of the army training camps, comprising from eleven to fifteen days each year. At thirty-two he goes to the *Landwehr* or second line, in which the training periods are less frequent, and at forty he is transferred to the *Landsturm* or reserve, where there is only an annual inspection of arms and accoutrements. An infantryman's total training, between the ages of nineteen and forty, amounts to about one hundred and fifty days.¹

Training
the officers.

All army officers are taken from the ranks after passing the recruit school. They are given special courses of instruction which means that they must serve for more than the minimum training period. These officers, most of them, are regularly engaged in civilian pursuits; they are not soldiers by profession. There is, however, a small cadre of full-time officers, about two hundred and fifty of them, who serve as instructors in the training schools for recruits and in the special schools for officers. Yet despite this very small regular establishment the Swiss Confederation can mobilize an army of about 150,000 first-line troops within a few days and can add to this, from *Landwehr* and *Landsturm*, nearly as many more within a week. The entire available strength of this citizen army, assuming that every trained and physically fit man of whatever age could be utilized, is reckoned at about half a million.

Swiss mobilization
during the
world war.

During the world war Switzerland remained a neutral but the government deemed it wise to mobilize the military establishment as a measure of security. Without any difficulty a force of about 200,000 men was put on the frontiers. It was an expensive business, this calling out the citizen soldiery and keeping a circle of steel around the little nation while the war lasted; but Switzerland was determined to take no risk of being treated like Belgium. The whole Swiss military system, it should be remembered, is devised for defense and not for invasion. Universal military training has not engendered militarism, or diffused a militaristic spirit among the people. The Swiss are a military, but not a militaristic race. In witness whereof they point to the fact that their country has been engaged in no foreign war for over a hundred years although she has seen nations fighting all around her.

¹ In addition there are rifle-shooting tournaments every year and marksmanship is the Swiss national sport.

So here is a democracy that has been spared most of the ills which democracy is presumed to bring in its train. Switzerland has enjoyed free government without suffering misgovernment. Her people have yoked democracy to efficiency with a striking degree of success, and it is a difficult combination to maintain. To what causes may this good fortune be ascribed? Partly to the smallness and compactness of the country, its natural defensiveness, and its varied resources. Partly also to the intelligence, patriotism, and good sense of its people. Partly, again, to the relatively equal distribution of property among them and the absence of any broad hiatus between rich and poor. And in part, finally, to sound traditions the people are determined to maintain. These, with a simple, intelligible, and rational form of government, provide the explanation.

A democracy without the ills of democracy.

Some years ago when Lord Bryce, the author of *Modern Democracies*, was in Switzerland making a study of the government, he talked with a well-informed young Swiss about the shortcomings of his political system. "Yes, it has very serious faults," the latter bemoaned. "For example, a legislative committee sometimes goes to an agreeable hotel in the mountains during the summer months and there it sits for days having a pleasant time at the public expense. It is an outrage!" "Well, if that is the blackest sin you can confess," replied the distinguished student of modern democracy, "you had better journey to Paris, Montreal, Chicago or Moscow, and if you are so politically circumspect you will soon find reason to bless the good fortune that made you a fellow-countryman of William Tell."

The best books in English on Swiss government and politics are R. C. Brooks, *The Government and Politics of Switzerland* (Yonkers, N. Y., 1918) and the same author's *Civic Training in Switzerland: a Study of Democratic Life* (Chicago, 1930). The former volume contains an excellent critical bibliography covering all phases of the subject. Mention should also be made of an earlier book—J. M. Vincent's *Government in Switzerland* (New York, 1900). In the first volume of Lord Bryce's *Modern Democracies* there is a hundred-page survey of Swiss institutions which for suggestiveness of comment would be hard to surpass.

Useful books in German are Z. Giacometti, *Das öffentliche Recht der Schweizerischen Eidgenossenschaft* (Zürich, 1930), which is the most recent and most comprehensive treatise; Fritz Fleiner, *Schweizerisches Bunde-*

staatsrecht (Zürich, 1922); Eduard His, *Geschichte des neuern Schweizerischen Staatsrechts* (2 vols., Basle, 1929); Karl Horher, *Die Schweizerische Politik* (Zürich, 1928); and Eduard Fueter, *Die Schweiz seit 1848* (Zürich, 1928).

Many books on the initiative and referendum in Switzerland have appeared from time to time. The best-known work, now somewhat out of date, is T. Curti, *Le referendum: histoire de la législation populaire en Suisse* (Paris, 1905). It should be supplemented by the discussions in the two volumes by R. C. Brooks (see p. 757).

CHAPTER XXXIX

THE GOVERNMENT OF SOVIET RUSSIA

Meanwhile, it is singular how long the rotten will hold together, provided you do not handle it roughly. For whole generations it continues standing, with a ghastly affectation of life, after all life and truth has fled out of it.—*Thomas Carlyle.*

Even well-informed Americans, for the most part, have erroneous ideas about Russia. They think of that country as a nation in the sense that England, France, or Italy are nations. On the map they have seen a vast expanse of territory sprawling westward over northern Europe and eastward over northern Asia—with an area of more than eight million square miles, or about three times that of the United States—all of it designated as Russia. They read that there are about 150,000,000 Russians inhabiting this great territory, all under one government, with Moscow as its capital. It is natural that they should think of Russia as though it were a unified country like the United States.

Russia as a nation.

But Russia is not a nation in that sense. It is an irregular check-board of territories and races. Before the war Russia was made up of at least ten quite distinct and none-too-closely-related areas, peopled by Russians, Poles, Jews, Finns, Letts, Turko-Tartars, and Mongolians. First, there was Russia proper, extending from the Baltic Provinces to the Ural Mountains, and from the Arctic Circle to the Black Sea. This great region is peopled almost altogether by Russians—Great Russians, Little Russians, and White Russians. Northwest, west, and southwest of this region were Finland, Latvia, Lithuania, and Poland, inhabited by peoples of a different speech and religion. Southeast, south, and east were Caucasia, Russian Central Asia, and Siberia. Here, again, people differ from the rest of the empire not only in speech and religion but in race. Such was Russia before the war, a huge salamander, comprising one-seventh of the land surface of the globe, but every part of it contiguous. As a result of the peace treaties some of this territory has been lost but the greater part of it remains within what is now called the Union of Socialist Soviet Republics (USSR).

Its divisions before the world war.

How the old empire was created.

The old Russian empire was built up by accretion. In the earlier stages its growth was much like that of the United States. Traders and settlers moved to the frontier where they came into contact with native tribes whose lands they presently absorbed. But during its later stages the expansion of the Russian empire was more like that of Rome. It was a blood and iron performance. War and conquest were its main features. Annexations were made as ruthlessly as in the days of Roman power.

The Asiatic influence.

Unfortunately the Tsars were not organizers and administrators as the Cæsars had been. They built up a civilization that was Byzantine rather than Roman, Asiatic rather than European. This was due in part to the fact that Russia, during the thirteenth century, came under the domination of the Tartars, and in the fifteenth and sixteenth centuries under the spell of Byzantine theological and political ideals. Not until the reign of Peter the Great (1689-1725) did Russia become subject to the influence of European civilization in any measurable degree. Tsar Peter did his best to Europeanize his empire but he was able to give it little more than a thin veneer.

Peter the Great.

Russia in the nineteenth century.

Yet Russia played an important part in European diplomacy during the eighteenth and nineteenth centuries. The echoes of the French Revolution hardly penetrated the great steppes; but when Napoleon was at the height of his power he made his voice heard there. Every student of modern history has read of the Corsican's march to Moscow, his retreat through the snows, and the utter collapse of his lordly venture. The Russians had a good deal to do with Napoleon's overthrow, for it was his ill-starred expedition into the heart of their country that sapped the military strength of France and made Waterloo possible. Russia had an enormous military advantage in being herself virtually invulnerable. She could conquer, but was herself immune from conquest. Her bulk and inaccessibility rendered her so.

Her political development.

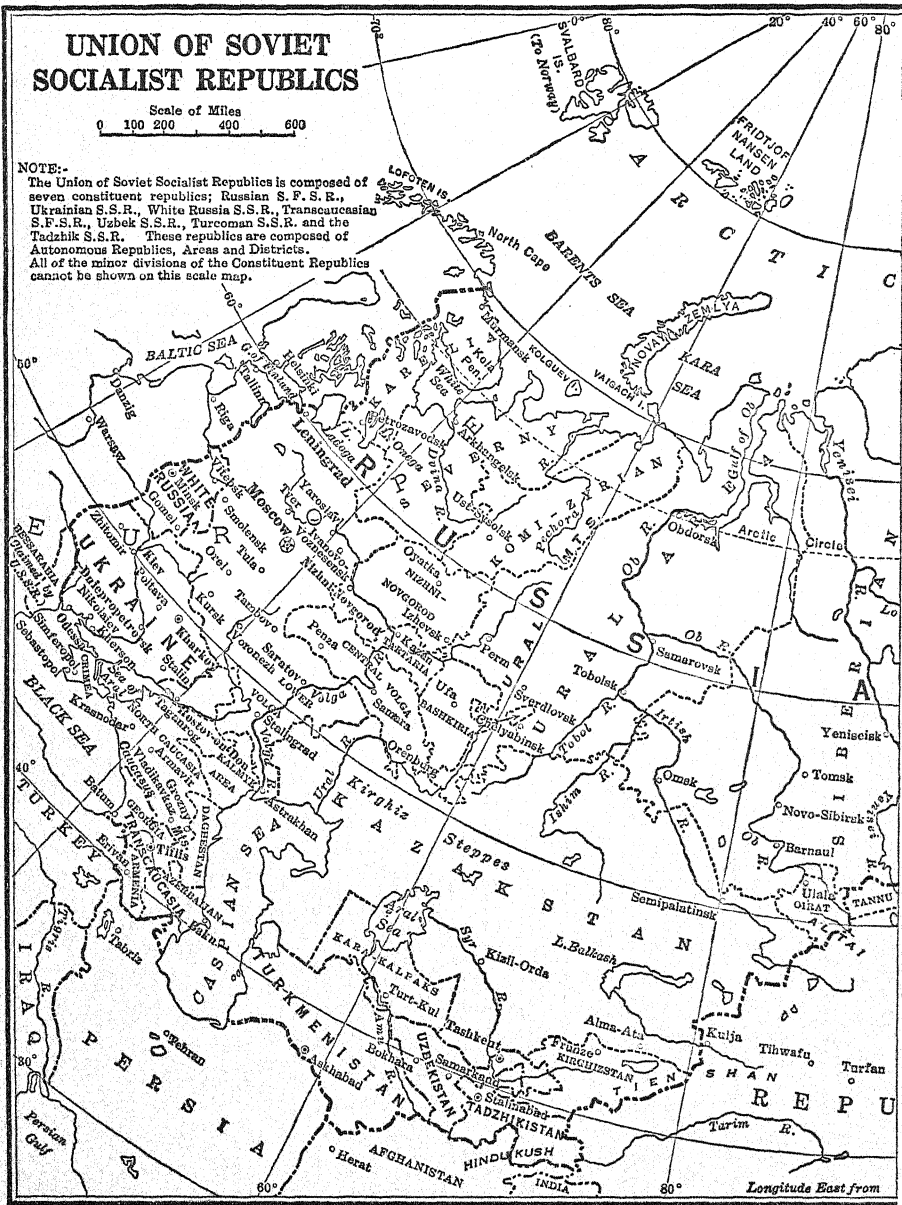
Everything favored the development and maintenance of an absolutism in Russia—the vast extent of the country, the variety of races included in it, the illiteracy of the people, the militarism, the primitive rural civilization, and the Oriental traditions. So the government became and remained despotic. From time to time the Tsars made various gestures in the direction of popular government but these did not mean much. The rulers were not willing to convey the substance of power to the representatives of

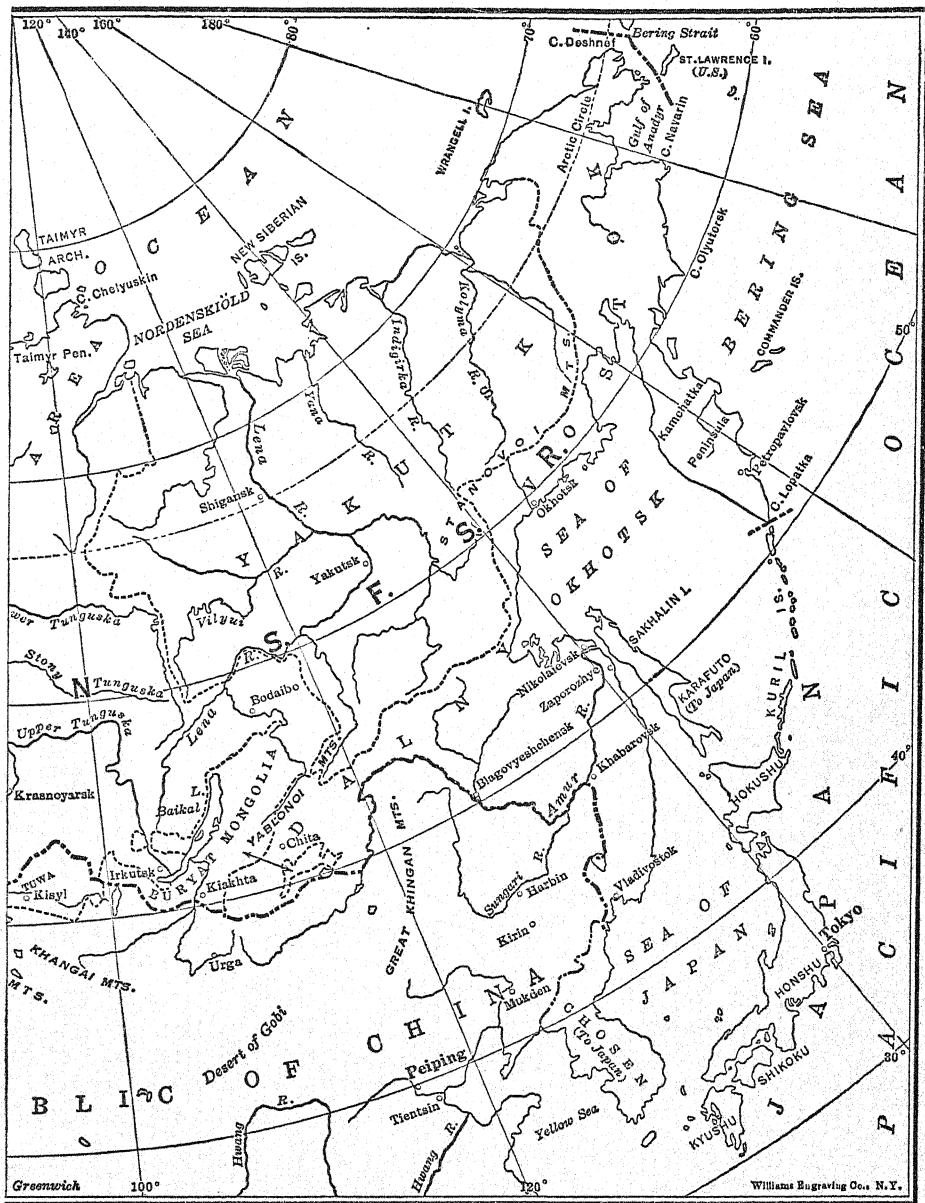
UNION OF SOVIET
SOCIALIST REPUBLICS

Scale of Miles
0 100 200 400 600

NOTE:-

NOTE: The Union of Soviet Socialist Republics is composed of 4 seven constituent republics; Russian S.F.S.R., 3 Ukrainian S.S.R., White Russia S.S.R., Transcaucasian S.F.S.R., Uzbek S.S.R., Turcoman S.S.R. and the Tadzhik S.S.R. These republics are composed of Autonomous Republics, Areas and Districts. All of the minor divisions of the Constituent Republics cannot be shown on this scale map.





the people. The wave of democracy which swept over western Europe during the year 1848 led to the framing of new constitutions in France, Italy, and Prussia; it even compelled some political readjustments in Austria; but upon Russia it had virtually no influence at all.

Some years later, in 1861, the Tsar Alexander II abolished serfdom in Russia and improved the economic status of the peasantry; but he did not break the power of the landlords or grant the people any participation in the conduct of their national government. Alexander did, however, establish a certain measure of self-government in the provinces and districts. In these the people were permitted, by indirect election, to choose delegates to district assemblies (Zemstvos) which were to exercise the right of levying local taxes, as well as to make regulations concerning such matters as roads and bridges, schools, public health, public buildings, and poor relief. In the cities the Tsar authorized the establishment of municipal councils, or Dumas, for the exercise of those functions which the Zemstvos performed in the provinces.

Alexander II and the abolition of serfdom (1859-1866).

These local assemblies soon afforded rallying points for a liberal movement which aimed at political reform in the empire as a whole. They grew steadily more assertive in their demand for a constitution and for the calling of a national parliament. But this liberal movement could not make much progress until after the close of the nineteenth century. Liberalism, in the autocratic circle surrounding the Tsar, was regarded as synonymous with revolution. The imperial authorities were so fearful of the very words constitution and parliament, that they went to the ridiculous extreme of censoring them in all the newspapers.¹ Meanwhile the teachings of Karl Marx and his disciples were turning many of the younger liberals to socialism and providing recruits for a Social Democratic party.

The liberal movement (1866-1905).

Thus the situation drifted until Russia engaged in her war of 1904-1905 against Japan and met defeat on land and sea. This national humiliation caused such widespread popular resentment that autocracy became alarmed. The Social Democrats in Russia were growing more numerous and becoming more outspoken, despite the unrelenting persecution to which they were subjected. The disorders which they were able to foment, especially among

The war with Japan.

¹ Baron Sergius A. Korff, *Autocracy and Revolution in Russia* (New York, 1923), pp. 7-8.

the industrial workers, now gave the authorities more worry than ever. In the rural districts the peasants began seizing the lands of the nobility and pillaging their mansions. Martial law had to be declared in many portions of the country. Students in the cities led the rioting and the universities were closed. These widespread and serious disorders made it clear that the old policy of reaction and repression would have to be modified. So the imperial government, to secure its own preservation, decided that a move must be made in the way of bending to the popular clamors for a national parliament.

The consti-
tution of
1905.

In 1905, therefore, the Tsar issued a series of decrees which professed to establish a constitution for his people. These decrees did not in fact abolish the autocratic system; on the contrary they asserted the executive supremacy of the emperor and reaffirmed his right to exercise an absolute veto over all legislation. They declared the Tsar's ministers to be responsible to him alone. On the other hand, they made provision for a national parliament of two chambers, namely, an upper house or Council of the Empire, and a lower house or Duma. In the Council of the Empire half the members were to be appointed by the emperor and the other half chosen for nine-year terms by the provincial assemblies, the land-owners, the nobility, the chambers of commerce and industry, the church, and the universities. Membership was restricted to persons over forty years of age who held academic degrees. Members of the lower house, or Duma, were to be elected through the district assemblies or Zemstvos, which were hereafter to be constituted on a basis of manhood suffrage. It was stipulated that no discussion of these decrees, or of military or foreign affairs, should take place in the Duma, but its assent was to be necessary for the enactment of general laws.

What it
amounted
to.

On paper this looked like a good start on the way to ultimate popular sovereignty. At any rate it brought Russia, in 1905, to the point that England had reached in the reign of King John, about seven hundred years earlier. But unhappily it did not prove to mark the beginning of a new era, and for two reasons: first, because the Russian people did not know how to use their new endowment of power in moderation, and, second, because neither the Tsar nor his ministers accepted the new political arrangements in good faith.

The first and second Dumas, which met in 1906-1907, contained

too many liberals and radicals. They alarmed the ministers by their uncompromising talk. Under this radical inspiration the Duma showed itself in no mood to rest content, even for the moment, with the powers that had been granted to it. Some of its leaders fumed against the "sham constitution" and demanded a constitution based upon the principle of popular sovereignty. In violation of the constitutional decrees it began to discuss ways and means of making the Tsar's ministers directly responsible to itself, thus establishing a true parliamentary system. A list of reforms was drawn up which included the granting of an amnesty to all political prisoners and the breaking up of landed estates for the benefit of the peasantry. It also demanded the direct election of its members by universal suffrage. Some of its hot-heads went so far as to declare, quite openly, that the true mission of the Duma was not to pass laws but to precipitate a revolution.

The first
two Dumas.

These two Dumas, having proved themselves too democratic in their ideas and discussions, were successively dissolved, whereupon the Tsar and his ministers decided that the time had come to change the system of election. A decree to accomplish this end was accordingly promulgated in 1907. It abolished manhood suffrage and provided that the voters should be divided into classes or *curiæ*, namely, the landowners, the manufacturers and merchants and the peasants and workers, with quotas of seats assigned to each class. It also made various other changes which aimed to give disproportionate representation to the propertied element among the voters. All this involved an open disavowal of the most important concession granted in 1905.

The elec-
toral
changes of
1907.

The electoral decree of 1907 worked as the Tsar and his ministers expected. The third Duma, elected under its provisions, was much less radical and hence more amenable to ministerial control. It was composed chiefly of landowners and merchants. In the main these members obeyed instructions and were permitted to serve out their five-year term. The fourth Duma, which came into office during 1912, was still in existence when the world war began. But neither the third nor the fourth Duma was truly representative of the Russian people. It was controlled by the well-to-do elements of the population. From time to time the members were able to persuade the Tsar and his ministers into amending their decrees; but in the main the Duma's functions were little more than consultative. "In order to acquire the right to exist," said one Russian

Its results.

liberal, "it had to become a mere cog in the mechanism of autocracy."

The disillusionment of the Liberals.

In this way the progress toward political democracy which seemed to have been started in 1905, was brought to an end. The people had asked for bread and had been given a stone. As a result of their disillusionment the Russian liberals had been forced to join the Socialists in believing that a parliamentary system could not be established in Russia by constitutional means.

The Russian autocracy during the early war years.

At the outbreak of the war this attitude toward political reform was held by virtually all classes in Russia except the nobility, some of the landowners, and most of the great industrialists. For a time the world conflict seemed to unify the country, as war always appears on the surface to do. The fourth Duma rallied valiantly to the support of the government; but when it urged some much-needed reforms in order that the war might be more successfully prosecuted after the defeats of 1914-1915, its advice was sternly rebuffed. Meanwhile the amazing incompetence of both the civil and military branches of the government was stirring all classes of the people to intense disgust and indignation. On every hand there was evidence of waste and corruption. The armies were badly led, inadequately supplied with munitions, and insufficiently provided with food. The measures taken for provisioning the civilian population of the cities broke down and the people went hungry while large stocks of foodstuffs were illicitly shipped into Germany and Austria. It became quite clear that the autocratic government was unfit to meet the crucial test of a great war.

The ministers and the Duma.

In this emergency, which called for caution and conciliation, the Tsar made the fatal error of choosing ministers of the most reactionary type, whose only method of dealing with hunger and discontent was repression. Even the Duma, conservative though it was, and coöperative though it desired to be, now grew restless under the daily shadow of the mailed fist. Its tribune was the only spot in all Russia where anyone could freely speak his mind. So the members began to assail the ministers, and as time went on these assaults became more violent. Charges of treachery were made against the men who were directing the diplomatic and military operations. It was hinted that the government was conducting secret negotiations with the enemy. Encouraged by this criticism in the Duma, the leaders of the Socialists among the workmen of the cities grew bolder. They fomented strikes in

Petrograd, Moscow, and the other industrial cities. Thereupon the government issued decrees ordering the members of the Duma to go home and commanding the workers to terminate their strikes. The Duma refused to disband and the striking workers defied the government's decrees. Thus the Revolution flashed like a red flame from the sky.

The first Russian Revolution began at Petrograd in March, 1917—just before the United States entered the war on the side of the Allies. It began as revolutions usually do. The striking workmen and the starving population of Petrograd came out on the streets assailing the government and demanding food. The Tsar was absent from the capital but his ministers undertook to disperse the crowds by calling out the troops of the Petrograd garrison, but the soldiers refused to obey the orders. On the contrary they joined the mobs which were now thronging the streets. Like the Parisians of 1789 the people now stormed the Russian Bastille, known as the Fortress of St. Peter and St. Paul, and set the prisoners free. Meanwhile a self-appointed committee of the Duma assumed control of the situation, appointed a new ministry, established a provisional government, and promised that a new constitution would be prepared. First Miliukov, the leader of the Liberals, and then Kerensky, the leader of the Social Democrats, were the heads of this provisional government. In connection with all this the Tsar was compelled to issue a decree abdicating the throne and was held prisoner with his family.

On the day that the provisional government was formed the representatives of the workers organized the Petrograd soviet of workers' and soldiers' delegates. Both the soviet and the provisional government had different points of view and kept issuing contradictory orders. The soviet, by a series of decrees which the provisional government was forced to accept, virtually abolished the old military discipline and thus sapped the morale of the already half-demoralized army. To prevent further working at cross purposes the provisional government and the soviet formed a coalition in May, but their joint efforts did not avail to check the military and economic disorganization of the country.

As the situation grew worse toward autumn a radical branch of the Social Democrats, known as the Bolsheviks, secured for themselves an increased share in the management of governmental affairs and insisted that the Revolution must be an economic as

The March
Revolution
(1917):

How it be-
gan.

Its second
phase.

The No-
vember
Revolution
(1917).

well as a political one. They were supported in this demand by the fact that the workers were already seizing the factories; the peasants were driving out the landlords and taking the land as their own. These Bolsheviks were not a majority element among the Russian people, but they had a definite program which the soldiers and workers could understand. Immediate peace and a dictatorship of the proletariat were their objectives. What is more, they had vigorous leadership, which the constitutional revolutionists lacked. Nikolai Lenin and Léon Trotsky, two leading Communists who had been exiled by the Tsarist government, now rushed back to Russia and vigorously led their followers into action. In this matter of leadership the parallel between the French Revolution of 1789 and the Russian Revolution of 1917 is quite striking. Even as power passed from Mirabeau to Danton, and from Danton to Robespierre, so it went (even more quickly) from Miliukov to Kerensky and from Kerensky to Lenin. Each revolution became more radical as it shifted leaders. At any rate, the Bolshevik leaders managed to get control of the soviets in Petrograd, Moscow, and the other cities. Then with the aid of the troops, they were able, in November, 1917, to throw the provisional government out of power.

Russia becomes a communist state.

Thus the second Russian Revolution was accomplished. A congress of the soviets now appointed a Council of People's Commissars, with Nikolai Lenin at its head while Trotsky took charge of the army. The new government forthwith proposed that peace be made by all the belligerents, and when this was declined it deserted the Allies and proceeded to negotiate at Brest-Litovsk a separate treaty with Germany. This treaty was a most humiliating one for Russia, but the new Bolshevik rulers accepted it in order that they might be free to go ahead with their political and economic overhauling of the country. Meanwhile they began issuing a series of decrees which abolished private property, and declared the railways, the banks, the factories, the mines, and the land confiscated from the bourgeoisie for the use of the proletariat. The Tsar and his family were put to death; many members of the nobility, landowners, former Tsarist officials, and intelligentsia were killed, imprisoned, or exiled; soviet commissioners were put in charge of the industries everywhere; and the Orthodox Church was disestablished. Within a few months the country was placed on a communist basis—so far as decrees could do it.

These drastic steps alarmed Russia's former allies who had large stores of munitions and supplies lying at various Russian ports such as Murmansk, Archangel, and Vladivostok. They sent troops to guard these supplies and the ports at once became rallying points for anti-Bolshevik leaders who undertook to start counter-revolutions. This action played into the hands of the Bolsheviks for it tended to unite the Russian people against what they were induced to look upon as foreign invasions aiming to restore the Tsarist autocracy. The counter-revolutionary movements were quickly suppressed.

Foreign intervention.

In the summer of 1918 the Congress of Soviets, now known as the All-Russia Congress, adopted a constitution which had been prepared for it by the Bolshevik leaders.¹ This constitution was not framed by men who had been elected for the purpose nor was it submitted to the Russian people for acceptance. It is still the constitution of the Russian Socialist Federated Soviet Republic, although it has been considerably modified by various decrees issued since 1918. In the meantime, moreover, certain large sections of Russia had declared their independence and had set up soviet republics of their own. Later they wandered back into the fold and in 1922 a general treaty of federation was made among them all.

The Soviet constitution of 1918.

By this compact a Union of Soviet Socialist Republics was created, with a federal constitution which was ratified in 1923. This Union includes the Russian Socialist Soviet Republic, or Russia proper, the Ukrainian Socialist Soviet Republic, the White Russian Socialist Soviet Republic, the Turkmenistar and the Uzbek Republics, the Tadjikistan Socialist Soviet Republic, and the Transcaucasian Socialist Federated Soviet Republic. Of the old empire several portions, Latvia, Esthonia, Lithuania, and Finland are now independent states; Bessarabia has been incorporated with Rumania, Kars with Turkey, and Russian Poland with Poland.

Formation of the USSR.

The constitution of 1918 begins by declaring Russia a "Republic of Soviets of Workers', Soldiers', and Peasants' Deputies." It is established "on the basis of a free union of free nations." Then

Fundamentals of the constitution.

¹ The Bolsheviks, on assuming power, had promised to abide by the decision of a constituent assembly, elected by universal suffrage. Such an assembly was elected, but a majority of its members proved to be out of sympathy with the Bolshevik program and in January, 1918, it was dissolved before it had accomplished anything.

follows a declaration of the rights which belong, not to the whole people, but to "the laboring and exploited masses." This portion of the document confirms and ratifies the action of the authorities in abolishing private property and nationalizing all the agencies of production. All land, all mineral wealth, all the agencies of production and distribution are declared to be public property and are handed over to the workers, without compensation, with the right of use only. All debts contracted by the Tsarist government are repudiated "as a first blow at international financial capital."

The suffrage.

The suffrage, by the terms of the soviet constitution, is extended to all Russian citizens eighteen years of age or over without distinction of sex, religion, or nationality, and without any residential qualification, provided they "earn their living by productive labor" and "do not employ others for private gain." Stipulation is made that this shall include soldiers and sailors. On the other hand it is expressly provided that the following classes shall have neither the right to vote nor the right to hold office: (a) those who employ others for the sake of profit (ordinary household servants are not included); (b) those who live on income not derived from their own labor (e.g., interest, rent, or profits); (c) business men, agents, middlemen, and other traders; (d) clergymen of all denominations; (e) persons who were connected with certain departments of the old Tsarist administration, and (f) the insane and those who have been convicted of "infamous or mercenary crimes." It is provided, however, that aliens resident in Russia, if engaged in productive labor, are entitled to the suffrage. Such persons may be given, without formality, all the privileges of Russian citizens. Although the age limit for all voters is normally fixed at eighteen years, it may be lowered by order of any local soviet subject to the approval of the central authorities.

A dictatorship of the proletariat.

The foregoing provisions, it will be noted, do not establish universal suffrage in Russia. They exclude all persons except actual workers including peasants and soldiers. In other words the suffrage rules shut out what is left of the Russian bourgeoisie,—a term which has been extended not only to shopkeepers and tradesmen but to all who keep even a single hired employee or servant. Even the peasant who hires a farm laborer to help him is thereby deprived of the right to vote. Thus the soviet constitution does not seek to establish a democracy but a dictatorship, a dictator-

ship of the proletariat. This is logical enough, for the whole theory of communist government is that all other classes are exploiters and parasites. Their existence should not be tolerated, much less encouraged by granting them any political privileges.

The frame of government which the constitution of 1918 establishes is extremely complicated. In some of its features it is almost incredibly cumbrous. It was intended to be so, for the leaders of the communists realized that when anyone desires to take the control of government out of the people's hands the first essential step is to make the plan of government altogether incomprehensible to them. The framework, as established in 1918, was retained in the Treaty of Union (1922) which made Russia a Union of Soviet Republics.

The frame
of soviet
government
in the
Union:

The highest organ of authority in the Union of Soviet Socialist Republics is the Union Congress of Soviets. This congress is made up of delegates from the urban soviets at the rate of one delegate for every 25,000 industrial workers, and from the provincial (guberni) soviets at the ratio of one delegate for every 125,000 rural inhabitants. Regular sessions of the congress are held once a year; in the interval between sessions a Union Central Executive Committee (TSIK), elected annually by the Congress, assumes the supreme legislative power. It meets every three months and sits for a fortnight. This executive committee is a large body, containing about four hundred members who sit in two chambers. One chamber is chosen to represent each of the seven constituent republics on a basis of their respective populations; the other is supposed to represent the various racial groups in the Union on a basis of equality. One is called the Soviet of the Union; the other is known as the Soviet of Nationalities. The executive committee maintains a Presidium, or steering committee of twenty-one members chosen by itself, and this body handles many matters of current business. It is also supposed to act as the supreme legislative authority and to control the commissars (see the next paragraph) when the executive committee is not in session.

1. The su-
preme legis-
lative
power.

The executive power rests in the hands of a cabinet, or Union Council of Commissars, as it is called. This body of fifteen commissars is elected by the executive committee and is responsible only to the latter but to the Union Congress as well. One commissar is president and four are rated as vice-presidents. But each commissar (except the president) is the head of an ad-

2. The ex-
ecutive
power-

ministrative department such as foreign affairs, war and marine, foreign trade, transport, labor, food, and finance. The decrees and regulations of this Council of Commissars are binding on all members of the Union and are to be executed without delay in their respective territories. Within this council there has developed a small Sovarkom, or inner cabinet, headed by Joseph Stalin, the President of the council. This small group, with an interlocking body known as the Politbureau dominates the whole administration.

Powers of
the Union
govern-
ment.

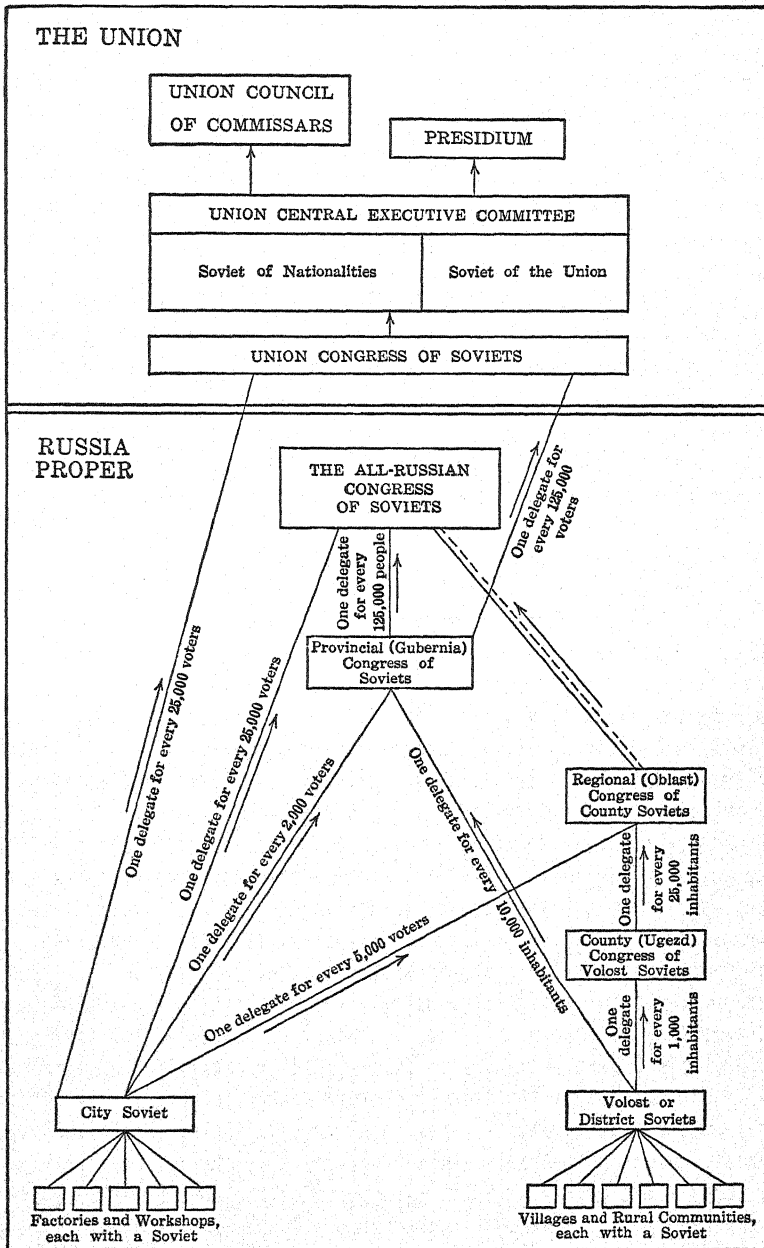
The Union constitution transferred wide powers to the foregoing authorities, including the control of treaties and foreign affairs, the right to declare war and to make peace, to conclude foreign loans, regulate foreign trade, to make contracts of concession, to regulate railroads, posts and telegraphs, to control the military establishment, to establish a uniform currency and credit system for the Union, also a uniform system of taxation, and to standardize the system of weights and measures. The Union authorities were also empowered to "lay down general principles to be followed by the constituent republics in the matter of civil and criminal law, judicial procedure, labor legislation, and schools. Finally, they were given the right to veto any law or decree of a constituent republic if in conflict with the treaty and constitution of 1922. This constitution is the supreme law of the land.

The govern-
ment of the
seven con-
stituent re-
publics.

The formation of the Union did not abrogate the constitutions of these seven constituent republics. Each of these republics retains its own soviet organization of government, but this is substantially alike in all of them. Ostensibly the seven republics are autonomous, but they have in fact very little power except to carry out the orders which come from the Union government at Moscow. Within the bounds of general policy laid down by the latter the governments of the component republics have authority over various local matters, such as education, health, social insurance, the administration of justice in the lowest courts, and the encouragement of agriculture. Most of this authority is exercised in each of the republics, by its own council of commissars.

General
character of
the soviet
pyramid.

Glance over the chart on the next page. It will be noted that at the bottom of the structure are, first, the groups of workers in the factories and shops of the cities and, second, the groups of peasants in the villages and rural communities. These groups (in each factory and each village) choose a local council or soviet.



If the factories or villages are very small, several of them combine to elect a delegate. The whole scheme of soviet government begins with these local soviets, which number many thousands throughout the Union. Everything else is pyramided upon them.

The unbalanced representation.

The local soviets then elect delegates to higher bodies. The village or rural soviets send delegates to a district congress of soviets; all the districts in a county send delegates to a county congress, and all the county congresses in a region send delegates to a regional congress. The urban soviets, on the other hand, send delegates directly to four higher bodies—to a regional congress of soviets above mentioned, to a congress of the province in which the city is located, to the congress of soviets of the constituent republics, and to the Union Congress of Soviets. The rural soviets do not obtain direct representation in the two last-named congresses, but are indirectly represented by delegates from the provincial congresses and in some cases from the regional congresses also.

Reasons for it.

Thus it will be seen that representation is not in proportion to population nor is it equally direct in the case of urban and rural voters. The ratio is heavily in favor of the urban industrial population and their representation is more effective because of its directness. This partiality is shown because the factory workers are deemed to be real proletarians and hence more loyal in their allegiance to the new order. The representation of the towns, it will also be noted, is fixed in terms of *voters* while that of the rural communities is set in terms of inhabitants, which is merely an ingenious attempt to mask the favoritism.

Noteworthy features of the government:

1. Not a real federation.

Now there are several other noteworthy features in this scheme of soviet government. In the first place Russia is ostensibly a republic made up of seven federated republics, among which Russia proper (RSSR) is larger and more populous than all the others put together. It covers nine-tenths of the Union area and contains two-thirds of the population. Consequently it dominates the whole federation. The government of the Union, in fact, is little more than a device whereby the government of Russia proper can fully control the affairs of the subsidiary republics while according them a gesture in the way of autonomy. Virtually the same men govern Russia proper and the Union.

2. No division of powers.

In the second place there is no separation of powers in the soviet scheme of government,—no system of checks and balances. Legislative and executive powers are combined, and to some extent

judicial power is thrown in for good measure. The same authorities prepare the laws and decrees, issue them, apply them, interpret them, and sometimes order people punished for violating them. As a matter of fact there is no separation between government and party. The Communist party is the government. Its leaders are the commissars and it is the commissars who have the power.

But the third outstanding feature of Russian government (by far the most interesting one) is the basis upon which representation is accorded. In England, France, Germany, and the United States the people are asked to choose their representatives on a *geographical* basis, that is, the voters of a ward, county, arrondissement, constituency, or district are given the right to elect the members of the lawmaking body. No matter what their vocation, all the voters who reside in a designated area vote together. Thus a member of Congress, in the United States, may represent a district in which there are farmers, industrial workers, miners, railroad operatives, professional men, shopkeepers, truck drivers, and all the rest. He represents them as so many units of population, without regard to their varied circumstances or conditions of daily life. The American theory is that a voter's interests are affected by the place where he lives rather than by the vocation in which he is engaged. In other words the geographical system of representation assumes that locality-consciousness is more important than class-consciousness. Hence a lawyer is deemed to be a fit and proper representative of shopkeepers or farmers if he resides in the same congressional district with them; but a farmer or a shopkeeper is not regarded as eligible to represent them if he lives outside the district.

3. The basis of representation.

The soviet system attempts to establish a *vocational* basis of representation. It is true, of course, that geographical areas are also used but this is merely to make the vocational basis workable. People of different employments vote separately—miners in one group, iron-workers in another, soldiers in a third, peasants in a fourth, and so on. Each group chooses representatives from its own class. A miner or an iron-worker in the Union Congress does not represent Kiev, or Odessa, or Minsk, or the city from which he happens to come; he represents a class of people, irrespective of their residence. This, at any rate, is the soviet theory of representation. It is, according to its apologists, "an unmeasurably better form of representation" than the world has ever tried before,

Why vocational representation is preferred.

for it represents "real groups with a common purpose," in contrast with geographical districts which are declared to be "nothing but meaningless conglomerations."

The argument for it.

As a theory there is something to be said for it. The geographical basis of representation is defective because it leaves out of account the fact that every voter belongs to a class or group, and is not merely a resident of a district. His class allegiance may be far stronger than his allegiance to the locality. Very often it is. Business men, wage-earners, farmers, professional men—they do not overlook the best interests of their own economic and social fellowship. There is no essential bond between two voters of different occupations for the mere reason that they happen to live in the same county. Neither can it always be taken for granted that men of the same occupation will think alike on questions of public policy. But on the whole it may fairly be argued that occupation forms a better basis in this respect than geography can hope to provide under present conditions of life. The change has been suggested, even in the United States. "It seems clear," says one writer, "that if the United States is to have in Congress a truly representative national legislature, the existing system of representation must be changed so as to admit of the representation, not only of population, as now, but also of recognized occupations or professions."¹

The argument against it.

But there is another way of looking at the matter. Can the well-being of the whole people be best promoted by distributing political power according to channels through which the various classes derive their livelihood? The soviet theory of government is based upon the principle that a man's occupation usually determines his attitude on questions of public policy. Perhaps that is true. But should it be allowed and encouraged to do so? In the United States we have gone on the principle that men are American citizens first,—miners or iron-workers afterwards. We have tried to maintain the doctrine that a man's interest in the welfare of the nation as a whole should exceed his interest in any class or organization. The whole is greater than its parts. A congressman is elected by the voters of a district, but not merely to represent that district. He is paid from the national treasury by the whole people of the United States; he is the representative of the whole people.

¹ William Macdonald, *A New Constitution for a New America* (New York, 1921), p. 133.

It is our frequent complaint that he does not always think continentally but is too much concerned, at times, with the interests of his own district. Now if he were elected by a class he would be in duty bound to represent that class, and it could not be urged upon him that his function is to serve the whole nation. The system would probably narrow the horizon of the representative to an even greater extent than our present arrangement does.

Vocational representation is said to have abolished class warfare in Russia, but it has done so by making a single class dominant over all the rest. A country can always extinguish class struggles, and indeed all other forms of internal conflict, by establishing a dictatorship. In Russia the arbitrary use of power on the part of the ruling class has paralyzed the ability of all other classes to put up any kind of struggle, however much they might desire to do it. Thus while economic interests are professedly the basis of the electoral system, and hence of the whole political structure, they are in fact subordinated to the exigencies of a governmental autocracy.

Government and class warfare.

A fourth conspicuous feature of the Russian political system is the long distance which separates the sovereign power from the people. In America the people directly choose both the executive and legislative branches of their government.¹ The President and Congress are only one degree removed from the voters. But in Russia they are several degrees removed. The Russian peasant, for example, elects his village soviet; this body sends representatives to the soviet of the district; and the latter elects delegates to a provincial congress. This provincial congress, in turn, is represented in the All-Russian Congress and in the Union Congress, both of which appoint central executive committees in their respective fields. Each executive committee then names a council of commissars whose president is the head of the government. Thus there are six or seven steps between the rural voter and the pinnacle of executive power. The distance is so great that virtually all responsibility of the commissars to the people is lost on the way. Ostensibly the whole people of Russia control their government. But they are required to exercise this control through a mechanism so attenuated that popular sovereignty becomes a pure fiction.

4. The long stretch between the voter and his rulers.

¹ In form, of course, the President is indirectly elected, but in fact the election is direct.

An American analogy.

The nearest American analogy to the scheme of governmental organization and responsibility in Russia is the structure of Tammany Hall in New York City. In fact one can fairly say that the Russian plan is merely the Tammany machine writ large, and with some extra gears and cogs thrown in. The Society of St. Tammany or Columbian Order professes to be a fraternal and benevolent association. It gives lip-service to the highest ideals, and intermittently carries these ideals into practice by befriending the poor. It also claims to be thoroughly democratic in its organization, controlled from below and responsible to its people. This control, however, passes through a number of diluting agencies on its way from the bottom to the top. First of all, the Democratic voters in the assembly districts of New York County elect delegates to a district general committee, one delegate for every twenty-five voters. The district committees are represented on the county committee which has an executive committee to do its work for it. This executive body is the chief Tammany organ but it does not necessarily control the boss although he frequently consults with it or with its individual members on questions of patronage and policy. Thus the head figure of Tammany is several steps removed from control by the rank and file of the party, which is just where he wants to be.

The supplementary organs of soviet government.

Not all the governing machinery of Russia, moreover, has been outlined in the preceding pages. In addition to the soviets, congresses, committees, and councils of commissars, there are special commissions of all sorts, permanent and temporary, ordinary and extraordinary. These have been established at various times and for a variety of purposes; they have been abolished and revived, pushed up and pulled down; they have been allotted powers and functions which are so ill-defined that no one knows just where their jurisdiction begins or ends. Some of them have been given prætorian authority to make decrees, to enforce them, and even to condemn those who disobey their orders. Best known among these was the Cheka, an extraordinary commission for the suppression and punishment of offenses against the state, and particularly for the detection of attempts at counter-revolution. It had the power of life and death virtually without restraint. It investigated, tried, condemned, and executed through its own machinery. In 1922 the Cheka was abolished but a state department, the "GPU" took its place, so that the administration of

punitive justice by extra-judicial authorities has not yet been brought to an end. The usual safeguards against judicial oppression are still lacking in the case of persons accused of counter-revolutionary conduct.

Each of the constituent republics in the Russian Union is supposed to have its own system of law and courts; but both the law and the judicial machinery are substantially the same in all of them. The supreme court of the USSR is the tribunal of last resort in all cases. There are lower courts, known as people's courts, each with a judge and two assessors or jurors. Above these are the provincial courts each with several judges.¹ The judges in all Russian courts except the supreme court hold office for one year and are appointed by the provincial authorities. The supreme court judges are chosen by the Union Central Executive Committee, or in reality by its presidium. The assessors or jurors in the people's, provincial, and supreme courts are called for six days' duty each year from an approved list of citizens. There is no regular system of trial by jury in Russia. The two assessors are supposed to take the place of a jury. They and the judge decide by a majority of the three.

Law and
courts.

Now someone may ask the question: Why doesn't the maze of soviets, committees, congresses, commissions, and councils break down of its own sheer weight? Why doesn't the whole system come to grief through conflicts and misunderstandings between the authorities of the Union and those of the seven republics, or between the latter and those of the provinces? The answer is to be found in the simple fact that one political party controls them all. Every public official in Russia, whatever his rank, is a member of the Communist party, and this party, through its Politbureau controls the whole mechanism of soviets, congresses, committees, councils, and courts. Communists do not divide power with any who are not of their own faith. There is no "loyal opposition" in Russia. Anyone who opposes the Communist party is "counter-revolutionary" and disloyal. So, when disputes or conflicts arise they are settled within the party's own ranks. They are party issues, not political issues. This domination of all geographical areas and all branches of the government by one political party, which brooks no opposition, is the key to the marvellous cohesion.

What keeps
this great
machine
from break-
ing down?

¹ There are also various special courts such as labor courts, courts of arbitration, military tribunals, disciplinary courts, and so on.

When Léon Trotsky disagreed with Stalin, the president of the council of commissars, he was not allowed to rally an opposition party around himself. He went promptly into exile. So with Rykov and all the other dissenters. When they disagree with the leaders of the Communist party they become "enemies of the state."

The Communist party.

The Communists form a small minority of the Russian people, but they are well organized. The party membership is grouped, first of all into "cells," of which there is one in each village and factory. Each cell sends a delegate to a party congress which elects a central committee, and this, in turn, appoints a political bureau (Politbureau) to guide the party activities. Most of the higher offices in both the government and the party are held by the same persons. Party discipline is strict and anyone subject to even slight suspicion is expelled from the organization. No one can become a member except after a probationary period during which his attitude and activities are closely watched.

The soviet state as an end.

The Russian constitution of 1918 declares with a flourish that it recognizes "the equal rights of all citizens" but it goes on to stipulate, in the very next paragraph, that no citizen may claim any privilege which might be used to the detriment of the socialist revolution.¹ For this reason the constitution does not incorporate any bill of rights. The Russian citizen has no rights against the state. As in fascist Italy, the state is the end; the individual citizen is only a means. But in Russia, by contrast with Italy, it is the workers and not the whole people who constitute the state. Thus the political philosophy of individualism is reversed. Freedom of the press, and of speech, as the rest of the world understands such freedom, is not reconcilable with this basic theory of Russian government. Such freedom is tolerable only insofar as it conduces to the strengthening of the new order. All this is logical enough, for if the chief end of man is to glorify the communist state and to help maintain a certain form of government, then the citizen can have no liberties that run counter to the attainment of these ends.

Economic policy of the government:

1. Toward agriculture.

The Russian Revolution, when the Bolsheviks took hold of it in November, 1917, became an economic revolution. It aimed to abolish individualism and to establish a communistic state—to place control of all power, wealth, and property in the hands of the proletariat. The constitution of 1918 abolished private prop-

¹ Article ii, sections 22-23.

erty in land and declared every foot of Russian soil to be the patrimony of the state. It added that this nationalized land was to be apportioned among agriculturists "in the measure of each man's ability to cultivate it." This constitution went farther and declared the nationalization of "all forests, all treasures of the earth, all waters of general utility, and all equipment, whether animate or inanimate." Such a declaration merely recognized a fait accompli, for the peasants had already driven out their landlords and taken the land. The government, although declaring the land to be state property, did not attempt to dispossess the peasants but allowed them to use the land as though they were the legal owners. For all practical purposes the peasant still owns his land. His children can inherit it, but he cannot sell it, at least he cannot give a valid deed to anyone else.

Meanwhile, in the cities, the owners of factories were ousted wherever they refused to accept the decrees of nationalization. Commissars, appointed by the government, were put in charge of the industries, but these officials were expected to manage them in harmony with the wishes of the workers who functioned through workers' councils or soviets, one for each factory. The workers were paid in scrip which entitled them to obtain food and supplies from government depots, for all private stores and all private trading were declared to be abolished. But this plan did not prove successful. The production of the factories declined, in part because the workers were now their own masters and could not be subjected to any effective discipline; in part because they were underfed and unable to work at full efficiency; in part, also, because the only people who could manage the technique of industrial production had been put out of the way.

The factories, moreover, found it impossible to get enough raw material. The government, as it turned out, was not able to provide this material nor could it supply enough food for the workers at its various depots, hence the whole population of the cities had to be placed on short rations. The peasants would not supply the industrial centers with foodstuffs unless the cities would guarantee, in turn, to provide the rural districts with manufactured products, and this, under the existing conditions, they were unable to do.

Production fell off alarmingly and the communistic basis of industry had to be modified. In 1921 the government decided to

2. Toward
industry.

Partial
breakdown
of the orig-
inal scheme.

The inauguration of NEP (1921).

restore private management of industry and private trading to a limited extent. This new economic policy (commonly known as NEP) permitted individuals and groups of individuals to own and operate workshops and factories, especially small establishments, on the stipulation that the government be given a share in the ownership. It allowed shops and stores to be opened under government license. It even invited foreign capitalists to come and manufacture or trade under concessions. Here was a curious intermingling of state capitalism and private capitalism. The Bolshevik leaders frankly admitted that communism had been applied on too extensive a scale and that there was no alternative but a partial restoration of private enterprise until the industrial life of the country could be stabilized. Thereafter, it was hoped, communism would once more spread itself over the whole field of industry, by easy stages.

Results of the change.

Under the spur of the new economic policy both agriculture and industry revived. Farmers began to rent land and to employ hired laborers. Soon a class of employer-farmers, or kulaks, arose. Industrial production went forward into higher figures. But the communist leaders soon became alarmed at the progress which "capitalism" seemed to be making under the NEP, and a reaction was presently inaugurated. The taxation of semi-private industrial establishments was made more burdensome. Beginning in 1924 the pressure in this and other ways became so rigorous that most of the "Nep-men" were driven out of business. The agricultural kulaks were also assailed in various ways and in 1928 the government devised what is known as the Five-Year-Plan, a scheme which aims to replace kulak farming by collective agriculture entirely and thus by gradual stages to increase the production of the land. The Five-Year-Plan also envisages a stimulated growth of Russian industry such as would make the country independent of foreign products and even an industrial exporter by 1933. Meanwhile, in order to facilitate this plan, the people are being required to undergo great sacrifices.

The Five-Year-Plan.

Currency and credit.

In connection with its economic policies, both old and new, the Russian government has endeavored to stabilize the currency and to provide systems of banking and credit. During the Revolution and immediately after it the old rouble became virtually worthless. It disappeared and a new standard of values known as the chervonetz took its place. The new paper notes are backed by

a gold reserve, but this reserve is not adequate and the chervonetz is still below par in terms of other European currency. A national Russian bank was also established, with many branches. This institution has been supplemented by various other banks—agricultural, coöperative, industrial, savings, municipal, and so on.

The revenues of the soviet government have been chiefly derived from taxes on land and on business. By the Revolution the peasants got rid of landlords and rent; but only to find these replaced by commissars and taxation. The shopkeepers and others who have been allowed to operate at all are heavily assessed. But even with high taxes the government has not been able to finance itself without borrowing extensively. The old Tsarist national debt was repudiated, but in its place has arisen a new state debt of huge proportions, the result of successive internal loans which have been floated by using various kinds of political pressure and economic inducements.

Taxation
and the
public debt.

The economic future of Russia is still clouded by much uncertainty. This is because of its dependence upon political exigencies. The arbitrary and uncertain use of political authority during the past ten years has quite destroyed the factor of confidence which is the basis of all sound economic organization and growth. For a brief season the private trader is encouraged; then, when he shows signs of prosperity, he is taxed out of the picture. Foreign capital is coaxed to come into the country by promises of concessions and then, when it arrives, is subjected to all kinds of hampering restrictions and annoyances. Private credit institutions are permitted to operate for a year or two; then they are told to close their doors. This instability of governmental attitude has been a serious barrier to industrial progress. In 1926 most observers would have agreed that Russia had definitely entered upon a phase of agricultural and industrial stabilization. Her economic progress under the new economic policy was notable. But within a couple of years a "swing to the Left" had altered the whole situation. As to what the next move will be any man's guess is as good as another's.

The chief
barrier to
Russian
economic
progress.

Under the old régime the Russian Orthodox Church had acquired great wealth and was exercising a profound influence in all parts of the country. After the Revolution the soviet government promptly "nationalized" all the wealth of the Church and decreed that no ecclesiastical organization would be permitted to

The Church
in Russia.

own property of any kind. Even the churches became state buildings and in many cases were turned into schools or secular meeting places. But wherever twenty or more "comrades" desired to use a church for religious worship they were accorded this right. By various decrees during the past half dozen years the soviet rulers have disclosed their antipathy to religion of any form. In their public utterances they have stigmatized religion as an "opiate administered to the people." Accordingly, the complete separation of church and state has been effected, and all religious instruction has been excluded from the schools.

The Third
Internationale and
its work.

In contemporary discussions of Russian affairs, and particularly of communist propaganda, one frequently encounters mention of the Third Internationale. What is it? Karl Marx, the founder of Marxian socialism, organized in 1864 the first International Working Men's Association, which became known on the continent as the *First Internationale*. His idea was to bring together, in one giant representative organization, the socialist comrades of all nationalities. It held several congresses but the collapse of the Paris commune, which the First Internationale had fervently supported, led to its disruption and in 1876 it was formally dissolved. In 1889, however, a *Second Internationale* was organized at Paris, and between this date and the outbreak of the world war seven further congresses were held, with delegates from the socialist organizations of all countries. At the Paris Congress of 1900 an international socialist bureau was created with certain propagandist functions. The outbreak of the world war in 1914 split the socialist organizations of the various countries and completely disrupted the Second Internationale but it was finally reconstructed by the more conservative labor and socialist elements in 1919. The more radical socialists, however, would not come back into the organization; instead they convened at Moscow and under the leadership of the Russian Communist party organized the *Third Internationale*. This body is ostensibly representative of communist organizations in all the chief countries of the world, but its headquarters are in Moscow and it is largely under the domination of the Russian Communist party. Its aim is to "unite the efforts of all revolutionary parties of the world-proletariate and thus to facilitate a communist revolution on a world-wide basis." It is heavily subsidized by the Russian government and is the chief vehicle through which the foreign propaganda of the Communist party is carried on.

This foreign propaganda has had its cycles of vigor and slackness. During the first few years after the Revolution the Communist leaders hoped and expected that they could stir up the workers and cause proletarian uprisings in other countries. But the world revolution failed to materialize and with the inauguration of the new economic policy at home the soviet government executed a right-about-face in its foreign relations. It began to seek diplomatic recognition from capitalist countries and to negotiate trade treaties with bourgeois nations despite its ostensible animosity to all such intercourse. It even commenced some pour-parlers in the hope of making a compromise with Russia's foreign creditors whose Tsarist bonds had been repudiated. The efforts to secure recognition and a resumption of trade met with some success in Great Britain, France, and Germany; but the debt negotiations came to nought and in 1927 Great Britain severed her diplomatic relations because of continued Russian propaganda. All attempts to secure recognition by the United States have failed. The American government has consistently declared that there will be no such recognition until Russia is ready to observe the essential conditions of international intercourse, to assume liability for her national debt, and refrain from attempting to subvert the institutions of democracy in other countries.

Russia's
foreign rela-
tions.

Writers have been fond of comparing the Russian Revolution of the twentieth century with the French Revolution of the eighteenth. There are some striking similarities,—and also some notable contrasts. Both were uprisings against a despotism which had become honeycombed with inefficiency and corruption. Both began in the capital city by storming the prison, ousting the government, and placing the monarch under surveillance. In both revolutions he was later put to death. In both countries the revolution became more radical as it ran its earlier course, and then reacted in its later stages. Both revolutions inaugurated a Red Terror for the upper classes, abolished the state Church, harried the nobility out of the country, gave the land to the peasants, and issued floods of paper currency until the country fairly wallowed in it.

The French
and Russian
revolutions
compared:

1. The similarities.

But the French Revolution came when France was at peace and had been for six years. In Russia the revolution occurred in the middle of a world war, with the country badly exhausted. The revolution took France into a war; it took Russia out of one. Economic conditions, moreover, were widely different in the two great

2. The contrasts.

upheavals. France, in 1789, had only one large city. Outside Paris there was no industrial population in the modern sense. The only proletariat in France at that time (outside Paris) was the peasantry. But Russia, in 1917, had many industrial cities which had become dependent upon the rural districts for food and for the raw materials of industry. France, in 1789, had no system of railroad transportation; one section of the country was not dependent on the rest. In Russia, on the other hand, the economic system had become (to a degree at least) based upon the facilities for transport, and these broke down.

Finally, and most important, the leaders of the French Revolution had no clear ideas as to what they wanted in the way of economic reconstruction. They had no Marxian philosophy to serve as their guide. Hence they did not try to change the existing economic system from top to bottom by shifting it to a strictly communist basis. The French Revolution was chiefly directed against the privileged orders—the nobility, the ecclesiastical hierarchy, the rich and powerful. The Russian Revolution did not rest content with striking at these groups but went after the bourgeoisie as well. That is why writers speak of the French Revolution as primarily political, but designate the Russian Revolution as a social and economic overturn. Possibly they overemphasize this contrast.

The future.

It is as yet too early to determine whether the world will find much similarity between these two great upheavals in their later stages. The French Revolution produced a Napoleon who eventually made himself master of the government and abolished the Republic. He restored the Church, reestablished the nobility, and set up in France a government more highly centralized than was that of the Bourbons before 1789. From the outbreak of the French Revolution to the height of the reaction an interval of about a dozen years elapsed. It remains to be seen whether Russia, as time goes on, will gravitate in the same direction. Will the Five-Year-Plan succeed? Or will there be a gradual drift to the usual type of popular government, to a unified executive, to individualism, and to a stabilized economic life?

Alfred Rambaud's *History of Russia* (3 vols., London, 1913) is a good source of information on early Russian political development. A more

recent work is G. Vernadsky's *History of Russia* (New Haven, 1929). James Mavor's *Economic History of Russia* (2nd edition, London, 1925) is a comprehensive book in its field. Events immediately preceding the revolution are explained in A. Meydendorf's *Background of the Russian Revolution* (New York, 1929); also in Baron Korff's *Autocracy and Revolution in Russia* (New York, 1923). A volume by P. P. Gronsky and N. J. Astrof entitled *The War and the Russian Government* (London, 1929) shows how the military mismanagement hastened the political collapse.

An English translation of the Russian constitution of July 10, 1918, is printed in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1920), pp. 376-400. See also Andrew Rothstein, *The Soviet Constitution* (London, 1923), and *Soviet Russia* (London, 1924). This last-named publication contains a translation of the constitution of the Union of Soviet Socialist Republics (July 6, 1923).

Many books on all phases of Russian politics and economic conditions have appeared during the past few years. It is impracticable to give more than a very small selection from this formidable mass of literature. There are good chapters on the old and the new Russian government in Malbone W. Graham's *New Governments of Eastern Europe* (New York, 1927). Maurice Dobb, *Russian Economic Development since the Revolution* (London, 1928); Edward A. Ross, *The Russian Soviet Republic* (New York, 1923); Stuart Chase, *Soviet Russia in the Second Decade* (London, 1929); Ivy Lee, *Present-Day Russia* (New York, 1928); A. L. P. Dennis, *The Foreign Policies of Soviet Russia* (New York, 1926); A. Yugoff, *Economic Trends in Soviet Russia* (New York, 1930); S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929); and W. H. Chamberlin, *Soviet Russia* (Boston, 1930) are all useful and interesting books. Most of them have bibliographical lists. Attention should also be called to the *Soviet Union Year Book* which is published annually in London.

For a chronological narration of events in Russia since the outbreak of the world war the reader may be referred to F. L. Benns, *Europe Since 1914* (New York, 1930), chaps. iii, xvii, xviii, with good bibliographies in the appendix.

CHAPTER XL

AUSTRIA, HUNGARY, AND THE SUCCESSION STATES

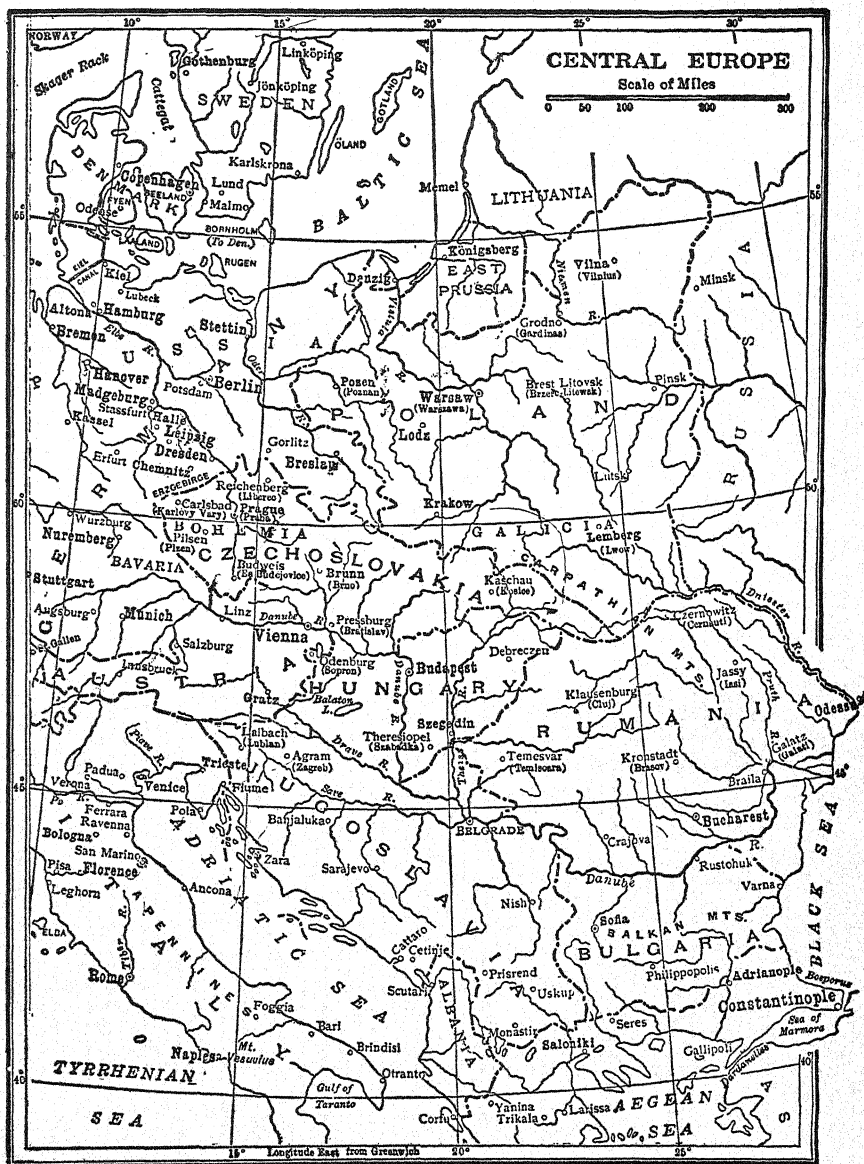
The Hapsburg empire was a governmental system, not a nation, and after the rise of the principle of nationality in the nineteenth century it had held together against powerful currents of disintegration because the ruling classes of its various elements believed their prosperity and security were better guaranteed by remaining in the empire than by separating from it.—*H. A. Gibbons.*

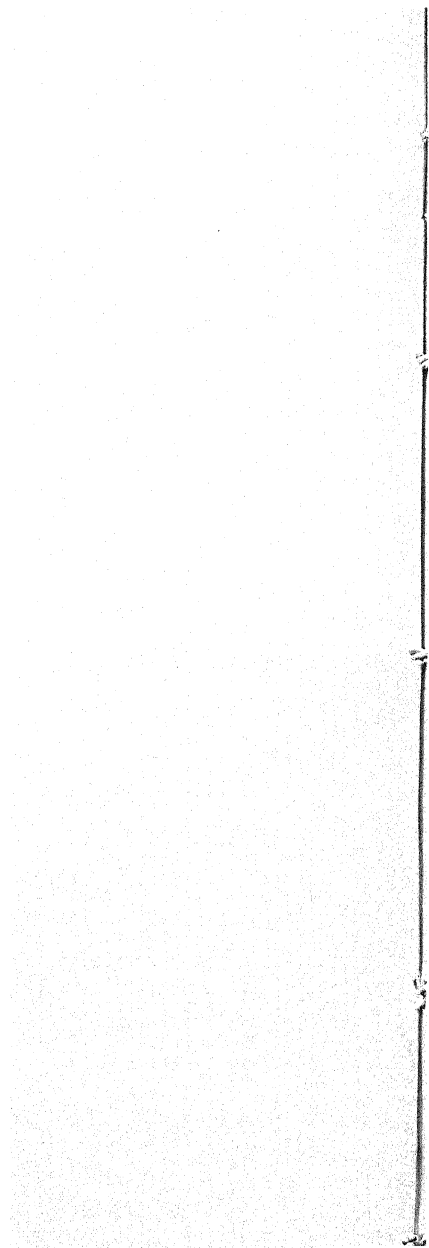
Medieval
Austria.

The history of those regions which are now included in Austria, Hungary, and the succession states (Poland, Czechoslovakia, Yugoslavia, and Rumania) is full of complications. Austria was a part of the Holy Roman Empire during the later middle ages, and at times the dominating factor in that loose aggregation. Her unity and strength enabled the Austrians to extend their sway over the bordering states, and in the early part of the sixteenth century both Bohemia and Hungary came into the Hapsburg orbit. Further extensions were made during the next two hundred years, and although Silesia was lost to Prussia in 1750 the Austrian emperors continued to dominate the politics of Central Europe down to the time of the French Revolution and even thereafter.

Austria's
emergence
from the
Napoleonic
upheavals.

Austria emerged from the Napoleonic period with more territory than she had when the wars began. At the Congress of Vienna she was given nearly all that she asked for. The Hapsburgs gave up some territory, it is true; but they were well indemnified by being given rich provinces in Northern Italy. This made their empire more compact, and more populous than it had ever been. But the Austria of 1815 was not racially homogeneous. On the contrary she was a veritable maze of nationalities, including not only Austria proper, but Bohemia, Hungary, Transylvania, Croatia-Slavonia, and the Italian provinces. This meant that the House of Hapsburg ruled a composite of Germans, Hungarians (Magyars), Croats, Slovenes, and Italians, none of whom had any close affinity with the others. If ever there was a political entity which defied the principles of racial self-determination it was Austria as the Congress of Vienna left her.





To outward appearance, however, Austria was a Germanic empire. Her ruling dynasty was German. Her capital, Vienna, was a city of people who spoke the German language. And Austria, as will be remembered, was a member of the old German confederation whose congress wrangled itself into oblivion during the middle decades of the nineteenth century. Yet the German Austrians formed a minority of the population, a very decisive minority. They were far outnumbered by Slavs and Hungarians, nevertheless they insisted upon controlling the government and to a large extent were successful in doing so by confining political power to the hands of a ruling class and thus thwarting the rise of democratic institutions. Absolutism in government, feudalism in society, special privileges for the favored few, oppression and misery for the unfavored many—such was the condition of Austria after 1815.

Social and political structure of the empire after 1815.

Great wars, as has been said, are almost invariably followed by a swing to the Right, and the titanic struggle which ended at Waterloo inaugurated an era of conservatism in every European country. In Austria the reaction went farther than anywhere else, with the possible exception of Russia. The emperor ruled as an absolute sovereign through ministers who were responsible to him alone. The great Austrian minister of this era was Count Metternich, who made it his life-long task to crush liberalism and democracy wherever they appeared. He was a Bourbon in everything but name, a man of the status quo, who regarded all new ideas as bad ones. There have been such in all ages—but not many of them have managed to govern thirty million people for nearly forty years, as Metternich did.

The era of reaction (1815–1848).

During Metternich's ascendancy all political life among the Austrian people remained moribund. There was a vigilant censorship over everything that smacked of popular liberty. No freedom of the press, of speech, or of public meeting, was tolerated. But although Metternich could imprison men he could not incarcerate the progressive political ideas which gained vogue everywhere as the nineteenth century wore on. The spirit of nationalism, the desire of races to secure a larger share in the guidance of their own political destinies, began to show itself in Bohemia, in Hungary, and in the Italian provinces. It found leadership in such men as Palacky, Kossuth, Deak, and Cavour. Unrest and expectancy surcharged the air. Peasants and workers had grown tired of the

Metternich.

old order and were beginning to demand a new world of their own making. The seeds of a political upheaval were germinating rapidly in the Hapsburg empire when the great reform wave of 1848 swept across the face of Europe. Neither Alps nor Carpathians proved tall enough to stem its force.

The movement of 1848.

The convulsions of 1848 began on the Seine but soon made their way to the Danube. Riots broke out in Vienna. Metternich, after thirty-nine years of power, was forced to flee. Hungary virtually declared her independence and adopted a series of laws which modernized the Hungarian government. Bohemia came forward with an ultimatum which demanded all sorts of reforms. And the Italian provinces, as has already been mentioned, attempted to shake off the Austrian yoke.¹ The government found revolutions under way in all directions. In its hysterical endeavor to conserve the unity of the Danubian state it made one great concession after another, but to little avail. The conflagration spread with marvellous rapidity and in this welter of disintegration it seemed for a time as though the empire would be torn into a dozen fragments.

How it collapsed.

Yet that was not what happened. The various races had common grievances but they could not unite against a common oppressor, hence the government was able to crush the uprisings one by one. Bohemia was subdued; the Italian provinces were recovered; and Hungary (with the aid of Russia) was crushed under the iron heel. Thus Austria came through her great emergency in triumph, and almost by miracle as it seemed. By the end of 1849 she was more than ever in a position to impose her will upon this congeries of states and races. And for a time she did it without scruples or leniency. The concessions were revoked and absolutism once more took the saddle. But not for long, because the war of 1859 disclosed the weakness of the whole imperial fabric and made imperative the strengthening of it by some form of practical reconstruction. Austria, it was clear, could not remain a great power without welding her various races more closely together.

The two alternatives and the ultimate choice.

There were two alternatives—federation or centralization. The various parts of the empire could be given a measure of autonomy and yet be linked up by a federal government representing them all. Or, the entire governmental authority might be centralized in Vienna but put on a liberal basis. Ultimately the emperor decided for centralization and in 1861 promulgated the first imperial con-

¹ Above, p. 681.

stitution with provision for a representative parliament. But Hungary declined to participate in the new government and this constitution had to be superseded by a new one in 1867. In the same year an agreement known as the *Ausgleich* was made with Hungary and this agreement virtually conceded the Hungarian demand for recognition as an equal partner in the empire.

The constitution and agreement of 1867 established a new form of state, a dual monarchy or joint kingdom. Austria-Hungary now became neither a federal nor a unitary empire but a dualism. Both kingdoms were recognized as fundamentally independent, each with its own constitution, parliament, ministry, and courts. Each was entitled to govern itself, as respects internal affairs, without any interference from the other. Yet they became equal partners in a joint enterprise—with the same monarch, a common flag, a common citizenship, and a channel of common action by means of joint delegations. This arrangement constituted more than a personal union (as was that of England and Scotland in the seventeenth century), but less than a federation. It was a contribution to the world's museum of political curiosities.

The *Ausgleich* of 1867.

The government of this dual monarchy, from 1867 to its dissolution after the military collapse of 1918, rested upon three constitutions—if such they can be called. First was the Austrian constitution of 1867, a series of five organic laws known as the *Staatsgrundgesetze*.¹ Second was the constitution of Hungary. This Hungarian constitution was not a single document, nor yet a series of organic laws promulgated on the same day, but a string of decrees and enactments dating from the Golden Bull of 1222 down to the year 1867.² And, finally, there was the *Ausgleich* or law of partnership which in the latter year determined the future relations of the two states.

The three fundamental laws of the duality (1867–1918):

In Austria the constitution recognized the emperor as the hereditary chief executive.³ Provision was made for a ministry, ap-

1. The Austrian constitution of 1867.

¹ These five organic laws were all promulgated on the same day (December 21, 1867) and might just as well have been combined into a unified constitution. Provision was made that they could be changed by a two-thirds vote of both Houses. The text of the *Staatsgrundgesetze* may be found in Lowell's *Governments and Parties* (Boston, 1897), Vol. II, pp. 378–404.

² Later supplemented by the Law of 1874 on the Table of Deputies (see W. F. Dodd's *Modern Constitutions* Vol. I, p. 105), and the Law of 1885 altering the organization of the Table of Magnates.

³ Francis Joseph was emperor in 1867. He continued in this post until the middle of the world war (1916) when he died and was succeeded by his nephew Karl, who found himself deposed in 1918.

The emperor and the ministers.

pointed by the emperor. The Austrian constitutional laws of 1867 stipulated that all official acts of the emperor should be countersigned by a minister, but they did not expressly prescribe that the minister should be responsible to parliament. In due course the outward forms of ministerial responsibility developed, but the principle never acquired much vitality because the clash of factions in the Austrian parliament made it easy for the emperor to hold the balance of power and thus to choose ministers at his own discretion. These ministers, with a vast bureaucracy of subordinates under them, served as the real forces in Austrian government during the old régime.

The old Austrian parliament.

The constitutional laws of 1867 gave Austria a parliament of two chambers—a House of Lords (Herrenhaus) and a House of Representatives (Abgeordnetenhaus). The former was made up of certain hereditary peers, archbishops, and an element of life members appointed by the emperor. This last-named group steadily increased in size until it became a very important factor in the upper House. The representative chamber was at first made up of members chosen by the provincial legislatures of Austria, but this plan was soon found unworkable and in a few years the organic law was amended to provide for the election of members by the people. But not on a basis of equal suffrage, for the voters were divided into five classes, chiefly according to the amount of taxes paid by them, and each class was given a definite number of representatives.¹ This cumbrous five-class system of voting continued until 1907 when it was replaced by a plan of equal and direct manhood suffrage. A redistribution of seats was also made in the same year.

The lack of parliamentary control over the executive.

Ostensibly the powers of the two Houses were the same, except that all financial measures and all bills affecting compulsory military service had to originate in the House of Representatives. The assent of both chambers was necessary for the enactment of laws, but when they disagreed on any financial measure the lower figures were deemed to be adopted. If the Austrian parliament happened to be in recess it was provided that the emperor, with the advice of his ministers, might enact emergency laws (other than financial measures), with the understanding that all such

¹ Four classes were created by law in 1873; a fifth class of "general voters" was added in 1896. This fifth class, however, elected only a small minority of the members.

emergency legislation must be submitted to parliament when it reconvened. The ministers might be interpellated in either House but this procedure amounted to little because they were not under obligation either to resign or to modify their policy when parliament failed to record its confidence after an interpellation. The ministers merely played one parliamentary group against another, making reluctant concessions here and there as the exigencies of the moment dictated.

Thus Austria, before the war, had the forms of popular control without the usages which alone can make popular government a reality. The will of the emperor, as in Germany, was the dominating factor in all matters of public policy. His ministers were not always able to impose this will upon parliament, but by one device or another they usually managed to do it. A vast, highly-professionalized corps of bureaucrats assisted in the work. These administrators possessed a wide range of authority and they exercised much of it in an arbitrary way, disregarding the inalienable rights of the citizen as we understand them. A rigid censorship and a close surveillance of all public gatherings was maintained by them, and to make the situation worse, there was a good deal of venality. On various occasions this corruption in the Austrian civil service was brought to light, but no general housecleaning followed. In a word, the old empire provided itself with a government of men, not of laws, and unhappily it was not always a government of honest men.

A great bureaucratic state.

Hungary, from 1867 to 1918, was also governed by its own constitutional laws and decrees. The Austrian emperor was, ex-officio, chief of state in Hungary, with the title of apostolic king. At Budapest he had a ministry, chosen by himself, but here the ministers were not only in theory but in fact responsible to the Hungarian parliament. This true ministerial responsibility gained vogue in Hungary because the Magyars were adroitly able to control a clear majority in both Houses and had a definite policy besides. The Hungarian parliament consisted of two chambers—a House of Magnates and a House of Deputies. The former was made up of hereditary and ex-officio members while the latter was an elective body. It did not rest on manhood suffrage, however, for there was a small tax-paying qualification. On the whole Hungary had a greater measure of popular government than her sister state.

2. The constitution of Hungary.

3. The constitution of the dualism.

The delegations.

How the dual government functioned.

In addition to the separate governments of Austria and Hungary, as thus briefly outlined, there was maintained a joint government, in skeleton form, as provided by the Ausgleich of 1867. Here the emperor-king stood at the head and directed such affairs as had been prescribed as common for the two partner-states.¹ In this work he was assisted by three ministers (foreign affairs, war, and finance) and a court of audit. These ministers and auditors were appointed by himself. The Ausgleich did not provide for a federal parliament of any sort. Instead it stipulated that committees or delegations from the parliaments of Austria and Hungary should be summoned every year (alternately at Vienna and at Budapest) to deliberate upon the granting of funds for the joint enterprise and for the determination of general policy within their allotted sphere. The two delegations, of sixty members each, chosen by their respective parliaments, did not sit together but considered all matters separately and decided them by concurrence. If, however, no agreement by concurrence proved possible, either delegation was entitled to demand a joint session and the matter was then decided by majority vote without any debate or discussion.

The jurisdiction of this dual government did not extend very far, but it dealt with vital matters as the event proved. Foreign affairs were managed in common, and not well managed as it turned out. Never has the world seen a more blazing display of diplomatic folly than was embodied in the Austrian ultimatum to Serbia and its immediate aftermath. National defense was also a common enterprise, with the emperor-king as the commander-in-chief and a minister of war exercising supervision over a military establishment in which Austrian and Hungarian units were embodied. How this bifurcated army acquitted itself in the war, and how the Germans had to stiffen it, every student of military history knows. Napoleon III once said, "Never go into partnership with a corpse." That, as it turned out, is what the Germans did in 1914. Finally, there was a joint budget, prepared by the minister of finance and voted by the two delegations. The necessary funds were not obtained by direct taxation under authority of the Ausgleich, but by the levy of customs duties and by calling upon the two countries for their apportionment quotas. In many

¹ On his accession he took two coronation oaths, one at Vienna as Emperor of Austria, and another at Budapest as Apostolic King of Hungary.

other matters (e.g., the monetary system, the control of the railways and telegraphs), common action was secured by the passage of identical laws in the two countries and not by action of the delegations.

This intricate and somewhat emasculated duality was a source of weakness from every point of view. It satisfied only the dominant racial elements in each state, the Germans in Austria and the Magyars in Hungary. The subordinate races were grievously disappointed, for what they wanted was a federal empire, such as Germany became in 1871, with a considerable measure of home rule for Bohemia, Croatia-Slavonia, Galicia, Ruthenia, and the rest.¹ The dual empire was weakened by the irreconcilability of these nationalistic elements. It was also weakened, in its relations with the outside world, by the fact that two independent delegates had to be brought into unison on matters of foreign policy which, under the *Ausgleich*, they were able to control. Austria-Hungary, before the world war, was not held together by natural cohesive forces but by external pressure. Her existence as a duality seemed to be made imperative by the exigencies of the balance of power in Europe. Diplomats were in the habit of saying that if Austria-Hungary did not exist, Europe would have to create her.

Its sources
of weakness.

It was the foreign office of this dual government that sent the ultimatum to Serbia in 1914 and thus precipitated the world war. During the early stage of this conflict Austria-Hungary maintained, outwardly at least, the semblance of complete harmony. All the rival races ceased their quarrels and threw their strength into the scale. But as the struggle continued, and as the hope of ultimate success disappeared, the symptoms of dissolution began to appear. Poles, Czechs, Slovaks, and Jugoslavs now came forward with demands for self-determination. In the early autumn of 1918 the emperor announced that Austria would become a federal state with local autonomy for all these races; but it was now too late. Hungary asserted that the *Ausgleich* was effective no more, and resumed freedom of action. One after another the various nationalities declared their independence and set up provisional governments. On the day of the German armistice, November 11, 1918, the emperor withdrew from participation in

The dual
empire dur-
ing the war.

The col-
lapse of
November
(1918).

¹ The dual government also controlled, under a sort of protectorate, the administration of Bosnia and Herzegovina, but in 1908 these provinces were annexed outright.

public affairs and a self-constituted council of Social Democrats at once proclaimed a republic in what was left of Austria. A temporary constitution was then promulgated for German Austria, while Hungary and the other portions of the old dual empire were left to shift for themselves.

The rise of
the new
states:

(a) The
Austrian re-
public.

From the ruins of the dual empire, in whole or in part, six new states have arisen—Austria, Hungary, Poland, Czechoslovakia, Yugoslavia, and Rumania. The new Austria contains only seven of the old provinces, and not all of these are intact because some portions were annexed to the other states.¹ The population of this new Austrian republic is nearly seven millions, about one-fourth of the number that was included in the Austrian half of the dual empire before the war. Its boundaries were fixed by the Treaty of St. Germain and its new constitution, framed by an elective assembly, went into effect in 1920.

(b) The
Hungarian re-
kingdom.

Hungary, during the overturn of November, 1918, was also proclaimed a republic and for several months was ruled by a provisional government. Then, for a brief interlude, it was replaced by a soviet government which endeavored to establish a dictatorship of the proletariat. With the aid of Rumanian troops, however, this soviet administration was ousted and a national government restored. A national assembly was elected by universal suffrage in 1920, but it did not frame a new constitution. It merely enacted a few constitutional laws in the effort to adapt the ancient constitution to the new order of affairs and declared Hungary to be a monarchy with the kingship in abeyance. Hence, in very considerable measure, the old constitution remains. Hungary lost a good deal of territory as the result of the war. Her population is now eight millions, about half what it used to be.

(c) The new
Poland.

Her earlier
history.

The new Poland is made up of territories wrested by treaty from three great pre-war empires—Austria, Germany, and Russia. Down to the last quarter of the eighteenth century, as everyone knows, Poland was an independent monarchy with that strangest of all executive headships, an elective king. In the old Polish parliament, moreover, there was a rule that nothing could be done, no tax levied, no law enacted, save by unanimous consent. Every member of the parliament had an absolute veto. He had merely to rise and say, "I object," whereupon a proposal could

¹ On the other hand, the territory of Burgenland, formerly a part of Hungary, is now largely incorporated in Austria.

go no further. He could even compel a dissolution of the parliament by declining to attend its session. This absurd system engendered political stagnation, while the elective kingship, with its recurrent contested or indecisive elections, invited civil war and foreign aggression. The political history of Poland in the seventeenth and eighteenth centuries is replete with lessons to the student of modern government.

Poland had the misfortune to possess strong and avaricious neighbors. Frederick the Great of Prussia was particularly envious because some Polish territory which reached to the Baltic at Danzig intersected his own Prussian provinces. Austria and Russia were also casting lustful eyes upon the fertile Polish acres which lay contiguous to them. At any rate these three powers joined their forces and in 1772 accomplished the first partition of the country. Poland was considerably reduced in size; her elective kingship became hereditary, and the *veto liberum* was abolished. A second partition followed in 1793 and two years later the last remnants of the old monarchy were divided up. Poland, as an independent state, disappeared from the map. During the next hundred years there were nationalist revolutions which attempted to regain for the people their right of self-determination, but in every case they were put down and the tripartite domination of Poland by alien powers continued until the world war.

The various partitions of the country.

Proposals for the restoration of Poland were made from allied quarters during the course of the struggle, and after America's entry into the war this restoration was included by President Wilson in his famous statement of aims, commonly known as the Fourteen Points.¹ The victory of the allied and associated powers ensured the consummation of this design and in the settlements which followed the close of the war the territories which now form the Polish republic were consolidated. Meanwhile, on the collapse of the German and Austrian armies, a constituent assembly was called, and in due course a republican constitution was framed. The new Poland is made up of territories covering about the same area as California, with a population of about twenty-eight millions.

The post-war restoration.

¹ In 1914 the Grand Duke Nicholas on behalf of Russia promised the future liberation of the Poles, and in 1916 the German and Austrian emperors by a joint manifesto, proclaimed the independence of Poland; but these were meaningless gestures, because they neither determined Poland's boundaries nor designated the form of government that the country should have.

(d) The
Czechoslovak re-
public.

Czechoslovakia, the second of the succession states, includes the ancient kingdom of Bohemia, with the territories of Moravia, Silesia, and Slovakia. Prior to the war Slovakia was part of Hungary; the others were within the old Austrian empire. This new republic is a landlocked peninsula about six hundred miles in length, thrust westward into the heart of Europe. It has about fourteen million people within its borders, two-thirds of whom are Czechs, and its total area roughly approximates that of New York State. The independence of the Czechoslovak republic was proclaimed during the toppling days that marked the close of the war, and a provisional constitution was put into force about a month later. This provisional document was supplanted by a permanent constitution in 1920.

(e) The
kingdom of
the Serbs,
Croats and
Slovenes.

Unlike Czechoslovakia, the kingdom of Yugoslavia is only in part a succession state. Yugoslavia is the old Serbian monarchy, nearly trebled in size, and now officially known as the kingdom of the Serbs, Croats, and Slovenes. Serbia was for a long time under the control of Turkey, but like the other Balkan States achieved its independence (1878). Outside her own boundaries, however, there remained large Yugoslav elements, especially in Austria and Hungary, and it was the hope of the Serbian leaders that these might by some means be federated with herself into a Greater Serbia. This nationalist aspiration was the taproot of the ill-feeling between Belgrade and Vienna, for it could never be brought to fulfilment without a disruption of the existing Hapsburg empire.

The allied victory gave the Yugoslavs their opportunity, and soon after the armistice they merged into a unified kingdom under a new name. When various boundary disputes had been settled, and after Montenegro had been added to the new state, the kingdom adopted a new constitution in 1921. This was framed, as in other succession states, by an elective assembly. The kingdom of the Serbs, Croats, and Slovenes has a population of about twelve millions, and an area somewhat larger than that of Kansas.

(f) The
kingdom of
Rumania.

Rumania is also a succession state in part only. Her history as a kingdom dates from 1861 when the two Turkish provinces of Wallachia and Moldavia (which Russia had tried to seize at the beginning of the Crimean war) were united to form an independent state. In the territorial readjustments which followed the close of the world war, Rumania was given Bessarabia, Bukovina, and Transylvania, thus doubling both her territory and her popu-

lation. Rumania is now a more populous state than Czechoslovakia.

Now it is not practicable to attempt within the limits of the present volume a detailed analysis of the governments which have been set up in these six countries—Austria, Hungary, Poland, Czechoslovakia, Yugoslavia, and Rumania. It must suffice to point out, in a comparative way, some of the salient features in their several constitutions. Three of them are republics; three are constitutional monarchies. This differentiation, however, is of very slight consequence, for in all six states the government is presumed to rest upon the will of the people. The old classification of governments into republics and monarchies no longer serves much purpose. It is more important to know whether the mechanism of a government is such that the people do in fact control it.

A survey of the new constitutions.

In three of the six states the existing government rests upon brand new constitutions. Hungary, as has been pointed out, retains her old series of organic laws, although with some alterations. Rumania, in 1923, overhauled and revised her earlier form of government, making some important changes in it. The constitution of Yugoslavia is merely a revamping of the organic law on which the Serbian government was based before the war.¹ It is really not a new constitution at all but an old one, touched up and extended over new territories. Only in Austria, Poland, and Czechoslovakia were new constitutions built from the ground. In any event the new or revised constitutions were in every instance the work of constituent assemblies, the members of which were elected by the people except in Czechoslovakia, where the Czechoslovak national council nominated the members of the provisional national assembly. No one of the new constitutions was submitted to the people for ratification or rejection; in each case the document was adopted and made operative by the assembly that framed it.

How they were framed and adopted.

An outstanding feature of these new constitutions is their length. The constitution of the United States would occupy twelve pages of this book, while that of Czechoslovakia would require thirty pages and that of Austria would fill about fifty. The Polish constitution is not so long as the others. Prolixity in their constitutions is not due to the greater elaborateness of governmental machinery in the various countries. It results from the incorpora-

Their unusual length.

¹ This, in turn, was fashioned on the constitution of Belgium, and the latter, again, was a heavy borrower from England.

tion of numerous clauses relating to the rights of citizens and to the new economic organization. The insertion of these clauses represents an endeavor to deal with certain fundamental problems of economic life which came quickly to the forefront in the disorganization of the post-war era. Throughout Europe, during the years since the armistice, politics and economics have become commingled. A constitution is no longer looked upon as the basis of government merely, but as a statement of the essential objectives in the nation's economic life as well.

How the
new consti-
tutions may
be amended.

The amending process may fairly be called the most important feature of any constitution. The purpose of a constitution is to facilitate progress toward the achievement of national ideals, and this it cannot do unless it is capable of being amended to meet the new needs that arise. In the United States this element of flexibility has been secured, in large measure, by the process of judicial interpretation; but European countries do not have that tradition. Their method of amending is by forthright amendment. Under such conditions a constitution should not be too easy to amend lest this bring about a lack of stability and continuity in the nation's governmental system. Nor, on the other hand, should it be too difficult to amend, for inflexible constitutions provide an incentive to coups d'état or revolutions. The ideal amending process is one that permits changes when the national interest requires them, but which does not encourage changes as a mere means of giving one political faction an advantage over the others. On this general principle all makers of constitutions have been substantially agreed, but they have been far from agreement as to the methods whereby the ideal can be attained.

The diverse
methods.

Among the six countries now under consideration, the constitution of Hungary alone can be amended by the ordinary process of lawmaking, as in England or in Italy. In Austria the new constitution provides that amendments may be made by a two-thirds vote of the national House of Representatives provided one-half the total membership is present. Such amendments must be submitted to the people, however, if a referendum is demanded by one-third of the members of either chamber in the Austrian parliament. A complete revision of the constitution requires, in all cases, a ratification by popular vote. In Poland a motion to change the constitution must be signed by at least one-fourth of the membership of the lower chamber. It then requires, for adoption, a two-

thirds majority in both chambers, with at least half the entire membership present. But provision is made for a general revision of the Polish constitution every twenty-five years by the two chambers meeting in a national assembly (as in France) and taking action by majority vote. In Czechoslovakia the assent of both chambers is essential for the adoption of a constitutional amendment, but ordinary laws may, under certain conditions, be enacted by the lower chamber alone. Finally in the Kingdom of the Serbs, Croats, and Slovenes (Jugoslavia), there are two alternative modes of amendment. If the proposal is made by the king, on the advice of his ministers, it cannot be acted upon until a new national assembly has been elected. Then it may be ratified by a majority of the total membership. But if the proposal emanates from the national assembly it may be voted by a three-fifths majority of the total membership in that body. Such adoption operates as a dissolution of the chamber, however, and the new assembly may then ratify by a majority of its entire membership.

It will be seen, therefore, that the American plan of having amendments ratified by the state legislatures, or by conventions specially called for the purpose, or by direct vote of the people, did not find favor in any of these new states of Central Europe as the normal process of changing the constitution. In all of them the national legislature has been given power to amend the constitution, but (save in Hungary) under varying restrictions. It is not that the framers of these constitutions were unfamiliar with American methods of constitutional amendment and revision. They had our long constitutional experience before their eyes, but they evidently were not impressed by it. In countries where racial animosity is intense it would hardly be a wise policy to put the constitution at the complete mercy of a popular majority. Such a plan would open its door for the oppression of racial minorities.

All of these six states have made provision for a unitary executive. The Swiss collegial system of executive headship did not meet with favor in any of them. Jugoslavia and Rumania have monarchs; Hungary has a regent; the other three countries have presidents. In Rumania and Jugoslavia the kingship is hereditary, the succession being confined to male heirs of the pre-war dynasties. In Hungary the new parliament formally declared the throne of the Hapsburgs vacant and appointed Admiral Nicholas Horthy to act as chief of state, with the title of regent, until such time as the

The American plan is not followed.

The executive organization.

national assembly could settle upon a new monarch in tranquillity. Ten years have passed but he is still acting. In Austria, Poland, and Czechoslovakia the President is chosen by the two chambers of the national parliament sitting in joint session. In this, all three countries followed the French practice. The presidential term is six years in Austria, seven years in Poland and Czechoslovakia. In Poland there are no limits upon the reëligibility of a president, but in Austria and Czechoslovakia he must not hold office for more than two successive terms. In Austria Wilhelm Miklas was elected President in 1928 and will hold office until 1934; in Czechoslovakia Dr. Thomas G. Masaryk was reëlected for a second term of seven years in 1927.

Nature of
the execu-
tives.

The powers of the chief executive vary considerably in these six countries, but in all of them he must be guided by the advice of his ministers. These ministers, although appointed by the chief of state, are definitely responsible to the representatives of the people. Herein is seen the complete triumph of the French over the American example. There was nothing to prevent Austria, Poland, or Czechoslovakia from basing their new governments upon the principles of separation of powers, making both the president and the legislature directly responsible to the people and largely independent of each other, as they are in the United States. Indeed it might have been assumed that in their reaction from the oppressions of the old régime they would have sought to ensure themselves against further tyranny in this way.

All have
adopted the
parliamen-
tary rather
than the
presidential
type of gov-
ernment.

But they did nothing of the sort. They chose, one and all of them, the *parliamentary* system of government, with its centralization of ultimate power in the legislative body, this legislative control over the executive to be maintained by insistence upon ministerial responsibility. Under their several constitutions the chief of state will not, in normal times, possess independent authority of any consequence. Large powers, to be sure, are vested in him by the phraseology of the constitutions, but the requirement that he must exercise them on the advice of responsible ministers is bound to operate as an impairment of them all. Whether it will reduce the chief of state to a figurehead, as in France, will depend upon the rigor with which the principle of ministerial responsibility is applied. In Poland the principle of ministerial responsibility has thus far been chiefly honored in the breach. Marshal Pilsudski, whose protégé was elected President of Poland in 1926 for a seven-

year term, became irritated at the advice which the ministry was giving. So he engineered a coup d'état, turned the ministry out, and when he found that the Polish parliament would not do his bidding as respects some radical changes in the constitution, he persuaded the President to order a dissolution and send it home.

In five of these countries there is provision for a bicameral parliament; Yugoslavia having decided to continue as before with a single chamber.¹ This single chamber in Yugoslavia, and the lower chambers in the other five countries, are all constituted in substantially the same way; namely, by popular election based upon universal suffrage. Save in Hungary the elections are conducted according to the principles of proportional representation. In the other countries this method of voting is required by the constitution, but the electoral mechanism was for the most part left to be determined by law, hence there are numerous differences in the methods of proportional representation used.² Members of the popular chambers are chosen for varying terms—four years in Austria and Yugoslavia, five years in Hungary and Poland, six years in Czechoslovakia—but in every case there may be a dissolution of the house, by decree of the chief executive (on the advice of his ministers) before this full term has expired. Whether this prerogative will be used frequently, as in England, or not at all, as in France, is something that must be left for the future to disclose.

The new
parliaments.

The question of a second chamber gave Austria, Poland, Czechoslovakia, and Hungary a good deal of difficulty. Austria finally adopted the plan of having a secondary chamber (Bundesrat) made up of members chosen by the various provincial or state legislatures—much as was done in the United States before the adoption of the seventeenth amendment. But the Austrian states are not equally represented in this second chamber; the quota of members from each province or state is proportioned to their population.³ The Rumanian senate is made up of three elements, elective, ex-officio, and life senators. In Poland and Czechoslovakia the members of the second chamber are directly elected by the people, but with a higher age limit for voting than that prescribed in the

Second
chambers.

¹ It should be mentioned that some smaller European states, including Finland, Esthonia, Bulgaria, and Turkey, have also adopted the single chamber system.

² For a discussion of them see Agnes Headlam-Morley, *The New Democratic Constitutions of Europe* (Oxford, 1928), pp. 97-112.

³ The Bundesrat now contains forty-six members divided among the nine provinces or states. The city of Vienna constitutes one of these provinces.

case of elections for the other house. No one can vote at elections for the upper chamber unless he is thirty years of age in Poland, and twenty-eight years of age in Czechoslovakia.

The idea of a dual electorate based on age.

This method of forming two distinct electorates, based upon difference in age, is intended to secure a parliament in which both chambers shall be equally responsive to the popular will but nevertheless represent different constituencies among the people. It is said to be an axiom of group psychology that age and experience give sobriety to opinion. The requirement that upper-house voters shall be older than the general run, and members in the upper chamber also older on the average than in the lower house, is being counted upon to make the second chamber in these two countries reflect the more mature aspects of the popular will. It is a novel experiment and an interesting one.

The reformed second chamber in Hungary.

Before the war the Hungarian upper chamber, or House of Magnates, was on a hereditary basis. It was made up of the nobility, like the House of Lords in Great Britain. After the collapse of 1918 it ceased to meet and Hungary managed to get along with a single chamber until 1926 when the second chamber was reestablished in a different form. It now consists of some appointed members, some elective, and some ex-officio. Out of the 242 members forty are appointed by the Regent for life; eighty are elected by counties and cities; thirty-eight are chosen by the nobility; thirty-four are elected by various public organizations, and the rest sit ex-officio—most of them because they are dignitaries of the Church. The elective members serve for a five-year term. In its composition, therefore, the Hungarian second chamber bears some resemblance to the Italian Senate.

Functions of the second chambers.

But second chambers in Europe have everywhere become secondary chambers. In Austria, Poland, Czechoslovakia, and Hungary, as well as in the German Reich, the constitutions do not attempt to put the two chambers on the same plane. The provisions which set forth the relations between the two houses are too intricate for elucidation here, but one thing they have in common; namely, the design to make the more popular chamber dominant both in lawmaking and in the supervision of executive policy. Almost necessarily so, for having decided upon a parliamentary form of government, with ministerial responsibility, it is impracticable to make the two chambers co-equal in authority and in influence. A ministry responsible in full measure to both chambers

is an unworkable institution, for neither ministry nor man can serve two masters. One chamber must be vested with the chief control of ministerial policy, and when so endowed it is bound to become the dominant branch of parliament, no matter what the wording of the constitution may be. This lesson of modern political history was not lost upon the framers of the new European constitutions. They gave the secondary chambers the right to be consulted, the right to delay, and under certain conditions the right to reject proposals of legislation; but they also provided means whereby the primary house, if fairly well united within itself, can make its will effective.

Attention may well be drawn to the extraordinarily wide acceptance which the principle of proportional representation has managed to gain in these various post-war constitutions. Prior to the world war this system of electing legislators was not used by any of the greater European countries save in certain local elections. To-day it is operating in most of them,—in Germany, Austria, Poland, Czechoslovakia, Rumania, Yugoslavia, Switzerland, Holland, Denmark, Sweden, Portugal, Greece, Bulgaria, Finland, Latvia, Lithuania, Esthonia, and Ireland—with a probability that it will be extended to the rest. That is an extraordinary spread for an electoral device which, fifteen years ago, most people had never heard of.

The spread of proportional representation.

The chief reason for this rapid extension may be found in the desire of statesmen to provide the minority elements with some means of voicing their sentiments in the national halls of legislation. For many years Europe had been wrestling with the problem of satisfying these minority races and factions, but with no marked success, as was demonstrated by the strong groups of irreconcilables in every continental parliament. As a solution of the problem the socialists kept urging the principle of proportionalism, and after the war they were in a position to make their demands effective. It was their contention that if a lawmaking body must be made up of factional groups, as seems inevitable in continental European countries, these groups ought to reflect with reasonable accuracy the divisions of political sentiments among the people.

Reasons for it.

Now assuming that no political party is able to control a majority in the legislature, and hence that some plan of bloc government is inevitable—if we begin with this assumption, the logic of proportional representation is puncture-proof. For it is the

The wide variation in methods used.

essence of representative government that it shall represent, and represent faithfully. To this end it should not give over-representation or under-representation to any element among the voters. But how can absolute fidelity of representation be secured? By what method of counting votes? The various new constitutions did not attempt to answer this question in any explicit way. They merely laid down the general stipulation that members of the lower chamber should be chosen according to a proportional system and left the details of electoral procedure to be worked out in each country by the legislature itself. Consequently each of the various countries has provided itself with a somewhat different scheme of proportional vote-counting. There is very little similarity, for example, between the Czechoslovakian and the German plans as they have been evolved in detail, or between the Danish, Belgian, and Polish methods. In other words there has been a broad acceptance of proportional representation as a principle, but no consensus of action upon it as a device. At least a half dozen different schemes are now undergoing trial and there is as yet no way of telling which of them is the best, or indeed whether any of them is worth while.

The chief argument for the system.

The chief argument in favor of proportional representation is that no parliament can truly represent the people unless it faithfully reflects the diversity of opinions among them. The function of a legislative body is (1) to deliberate, and (2) to decide. But when any one party controls a majority of the legislators, the deliberation is a mere gesture—so the argument runs—because the votes are in hand to decide the question no matter how the deliberation results. Under proportional representation no party gets a majority of the seats unless it represents the opinions of a clear majority among the people.

How it operates in practice.

In actual operation, however, the system of proportional representation has not worked out that way. It encourages a multiplication of small parties, the members of which are strictly bound by party pledges and prejudices. The deputies who represent these small groups are not free to deliberate, decide, and compromise. They must stand firm for the tenets of their respective little groups. The result is a stalemate or something very close to it. In Germany, as the result of the 1930 elections, there are ten parties represented in the Reichstag. In Czechoslovakia, at the election of 1929, fifteen parties obtained representation, of which seven gained

more than twenty seats. In a chamber of three hundred members the strongest party numbered only forty-six representatives. Poland holds the record, with twenty-three parties represented in her Sejm and a dozen others that have failed to gain seats although they put forward candidates.

All this is not meant to imply that the system of proportional representation is alone responsible for the disintegration of political parties in these succession states. Quite as important, among the contributory causes, is the ever-growing tendency to form parties which do not represent general opinion but the interest of some economic group, or some social class, or some geographical section. Thus in the Polish parliament there is a German group, a Jewish group, and a White Russian group, besides a Peasants' party, and a Labor party. So long as the political parties, in any country, represent some substantial body of national opinion and seek to promote some general policy the number of parties must necessarily be small, because the alternatives on questions of general policy are few. But when parties represent trades, or races, or religions, or sections, or social divisions their number becomes potentially unlimited.

Parties and
economic
interests.

Yet parties are the foundation of popular government. They determine its spirit and temper. When one studies the constitution of countries like Poland or Czechoslovakia, for example, it should never be forgotten that the real basis of government is not the written constitution but the mass of traditions, usages, racial traits, party tendencies, popular ideals, and aversions, which determine the character of their national politics. It is on these that the constitution rests. It is from them that it draws its elements of strength or weakness.

Visible and
invisible in-
stitutions.

Of itself a constitution has no virility. What it gets it must derive from men—from politicians. Hence it avails little to frame a constitutional guarantee for the rights of minorities if there is no popular tradition of tolerance underlying it. Nor does it profit much to stipulate that there shall be full ministerial responsibility if the legislative body (to whom the responsibility accrues) is so disintegrated by racial, religious, and sectional factionalism that it can never hold itself, much less hold the ministers, to a consistent line of policy. For that reason the forces which determine the integration or disintegration of political parties are the most important of all factors affecting the success or failure of a government.

The driving
forces.

Now what are the driving forces behind the governments of these succession states in Middle Europe and the Balkans? Most of them are racial. In virtually all these countries the body politic is erected on a foundation of racial diversity. This is in many cases so pronounced, and so surcharged with animosity, that it absolutely precludes a welding of the electorate into two, or even three or four, great party-groups. It makes race hatred and race conflict inevitable at every election. Nor is this the only sinister influence. Historic antipathies arising out of religious differences are also at work in the same direction. Economic intolerance, the class-consciousness of landowners, bourgeoisie, peasantry, and proletarians, is a disintegrating force of relentless power.

The prob-
lem of tol-
erance.

It is difficult for an American to appreciate the abysmal intolerance—racial, religious, cultural, geographical, economic, and personal—which saturates the whole electorate of these six countries. Yet without an appreciation of it there can be no clear grasp of the difficulties with which these new governments have to contend. It is easy enough to declare in the bombast of a new constitution that "all citizens shall be in every respect equal before the law, and shall enjoy equal civil and political rights whatever be their race, their language, or their religion";¹ but what does it amount to, after all, if there be no diminution in the historic hatred of one element toward another? What does it avail, if the lust for the oppression of one race or class by another continues unabated?

It is often said that the men who are best fitted to start a revolution are the ones least fitted to finish it. Tearing is easier than rearing. Wreckers do not make good architects. In the countries of Central Europe the various revolutions were inaugurated under the leadership of the radicals, the extremists of the Left, the *démolisseurs*, who drove ahead furiously so long as their task was merely one of razing the old political structure. For the moment these apostles of the new order seemed to have unified the whole people. But they soon came face to face with the far more difficult problem of constructing a new edifice, and for this they were equipped neither by temperament nor by experience. Thereupon began a swing to the Right, and leadership gradually passed into more moderate hands. With each step in this change the old party alignments of pre-war days have come more clearly into

¹Constitution of Czechoslovakia, Article 128.

view; the old issues and organizations have been revived under new names; and the old forces have again flared up in all their virulence.

The constitutions of Austria, Poland, Czechoslovakia, and Yugoslavia may be found (translated into English) in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922).

Descriptions of the new governments of Austria, Hungary, and the succession states are given in Malbone W. Graham's *New Governments of Central Europe* (New York, 1924). On the government of Austria the most useful books are H. Kelsen, *Österreichisches Staatsrecht* (Tübingen, 1923); L. Adamovich and G. Froelich, *Die Österreichischen Verfassungsgesetze des Bundes und der Länder* (Vienna, 1925); and C. Eisenmann, *Dix ans d'histoire constitutionnelle Autrichienne* (Paris, 1928). On Hungary there is S. Csekey, *Ungarns Staatsrecht nach dem Weltkreis* (Tübingen, 1926). The government of Czechoslovakia is described in J. Kudela, *La constitution de la république Tchèqueoslovaque* (1922); N. Van Wijk, *The Czechoslovak Republic* (London, 1923); and J. Chmelar, *Political Parties in Czechoslovakia* (Prague, 1926). On the government and politics of Poland the most useful discussions are A. Peretiatkovich, "La constitution polonaise," in the *Revue du droit public et la science politique*, October-December, 1922, and E. Meyer, *Der Polnische Staat, seine Verwaltung und sein Recht* (Posen, 1924). For Yugoslavia the most useful source is N. Yovanovitch, *Étude sur la constitution du royaume des Serbes, Croates et Slovenes* (Paris, 1924).

CHAPTER XLI

THE LEAGUE OF NATIONS AS A SCHEME OF GOVERNMENT

Nation shall not lift up sword against nation, neither shall they learn war any more.—*Isaiah* ii. 4.

Significance
of the
League.

The preceding chapters of this volume have dealt with national governments and with the political problems of national states. But since the close of the world war there has been established, with its headquarters in Europe, a far-reaching scheme of international government which has had very important reactions upon the governmental policy and problems of great countries in all parts of the globe. Whatever differences of opinion Americans may hold concerning the proper attitude of their own country toward the League of Nations, there can be no gainsaying the fact that the covenant of this League embodies the most comprehensive and the most promising effort in the direction of international coöperation that the human race has ever been able to achieve. It represents the world's first serious endeavor to carry into effect an ideal which prophets and philosophers have cherished for at least ten centuries. The provisions of this covenant set up a framework of international organization which deserves study not only because it is unique but because its makers were men of great proficiency in the science and the art of government.

How it grew
out of the
World War.

During the height of the great European conflict, and particularly toward the close of it, there surged through the world an almost spontaneous demand for the establishment of some international organization which would make future wars impossible. Civilization became alarmed at the stupendous wastage and destruction. Everywhere it was felt that the old balance of power would be destroyed by the war and that new alliances among the nations would not serve as a guarantee of peace in future years. This feeling was particularly strong in Great Britain and the United States. Societies were formed in both countries to promote the idea of a world federation or league to enforce peace. Several

schemes for such an organization were prepared. The plan enlisted the active sympathy of President Wilson who believed the project of some such league to be the most important among all the problems of peace-making. To help with its solution he took the highly unusual course of personally attending the conference which convened at Paris in the closing days of 1918.

When the members of this conference assembled it was agreed that a special commission should be appointed to prepare a plan for a league of nations, and President Wilson was appointed to be the head of this special commission. After prolonged discussions and consultations the draft of a covenant for such a league was prepared and published to the world before being submitted to the whole conference for adoption. Then, after the critics had been heard, it was somewhat amended and went before the conference for final action. President Wilson insisted that the covenant should be made an integral part of the general peace treaty and on this point the other delegates to the conference eventually gave way although with much reluctance. They felt that the covenant ought to stand by itself.

Preparing
the cove-
nant.

The peace treaty and the League covenant together make up the longest international agreement ever framed. They would fill about two hundred pages of this book. But the covenant is a relatively short document of only 2500 words. Its text consists of a preamble and twenty-six articles. Some of the articles have been amended since 1920 and these amendments, instead of being added to the end of the covenant, have been inserted in the text itself.

Text and
amend-
ments.

The covenant is the constitution of the League and the basis of its organization. Its preamble begins by stating the main objects of the League and the general methods to be followed in achieving them. Then come the various articles which deal with League membership, the general framework, the individual organs of the League and their procedure, the selection of League headquarters, disarmament, guarantees for the preservation of peace, and the enforcement of international obligations. The remaining articles of the covenant deal with the League's relation to non-member states, the registration of treaties, the mandate system, the international labor organization, and various miscellaneous matters.

Its arrange-
ment.

The covenant does not establish a supergovernment. It does not set up an organization separated from and superior to the

Its central
idea.

governments of the countries which comprise the League. It creates an international, not a supernational government. Its central idea is coöperation, not dictation from above. The League of Nations was designed by its architects to be a body of states working together on a common basis to attain a common end, and duly provided with agencies through which their controversies might be amicably adjusted. It represents, in a mild form, the extension of the federal principle with which the world has long since become familiar in its application to national government.

Member-
ship of the
League.

The League of Nations includes two kinds of member-countries. Certain nations, forty-two of them, were named in the covenant as entitled to charter membership. But provision was made that any other self-governing state or dominion might be admitted to membership by a two-thirds vote of the League Assembly. All in all, fifty-six nations and self-governing dominions have become members since the League was established in 1920. Only four important countries have refrained from joining. These are Russia, Turkey, Mexico, and the United States. A few small states have also stayed out. Member-countries have the right to withdraw from the League at any time on two years' notice, provided that all its obligations have been fulfilled at the time of such withdrawal.

The League
organs:

1. The
Council.

The League has two deliberative bodies. The first is a Council of fourteen persons, five of whom permanently represent France, Germany, Great Britain, Italy, and Japan, and nine of whom represent other member-countries which are designated by the Assembly from time to time. In addition any member-country which is not represented in the Council has the right to such representation temporarily whenever matters specially affecting the interests of the country are under consideration. The Council is headed by a president, who is chosen at each meeting from among its own membership. Meetings are held at least once a year and may be held elsewhere than at Geneva. As a matter of practice it has been holding regular quarterly sessions. Emergency meetings may also be called at any time. The Council establishes from time to time various special committees or commissions from among its own membership or even from persons outside.

2. The
Assembly.

The other deliberative organ of the League is the Assembly. Every member-country is entitled to be represented in this body by one, two, or three delegates, but no matter what the number of

delegates each country has a single equal vote on all questions. Thus the Assembly is controlled by the smaller countries. The Assembly meets each year on the first Monday in September and likewise chooses its own presiding officer. The agenda for each meeting is prepared by the Secretariat but questions may be placed on it by the Council or by any member-country. English and French are official languages in the Assembly and every speech delivered in one of these languages is forthwith translated into the other. The Assembly does much of its business through six regular standing committees.

Unless otherwise stated in the covenant, every decision of the Council requires a unanimous vote, but on most matters the action of the Assembly is determined by a majority. The Assembly has three kinds of authority. The first is that of initiating amendments to the covenant. The second is the power to elect the non-permanent members of the Council and to admit countries as new members of the League. Likewise it shares with the Council the function of electing judges and deputy judges of the Permanent Court of International Justice (World Court). Third, the Assembly has the broad power to discuss and deal with any matter that affects the League or the peace of the world. Moreover, it may refer any such question to one of the League's technical organizations (e.g., the international labor or health organizations) for study and report. In most matters the Assembly and the Council stand on a footing of equal power, but the League budget is controlled by the Assembly.

Powers of
the Assem-
bly.

The cost of maintaining the League of Nations is borne by the member-countries, each bearing a share which is based upon its national revenue and its population. The total budget is only five or six million dollars per year which is less than that of a medium-sized American city. The expense budget is prepared by the Secretariat and examined by a special commission (appointed by the Council) before it goes to the Assembly.

League
finance.

During the period between meetings of the Council and the Assembly the work of the League is carried on by a Secretariat, which consists of a general secretary and a large staff. The Secretariat performs the clerical work for the League, registers all treaties, carries on the correspondence with member-nations, prepares business to be laid before the Council and the Assembly, and keeps all the records. It is divided into various sections, each of which deals with

3. The
Secretariat.

such matters as mandates, armament, labor, social problems, public health, and so forth. Each section is headed by a director. Thus the Secretariat forms the administrative branch of League organization. Its staff includes over four hundred persons. Under the guidance of the Secretariat there are various special commissions and advisory committees at work. These are authorized and appointed from time to time by the Council or the Assembly. Likewise special conferences of delegates from the various member-countries are called to consider designated questions.

No separate
executive
organ.

It will be noted that the covenant makes no provision for a special executive organ. There is no president of the League of Nations, no cabinet, no prime minister. Some executive functions are given to the Council, some to the Assembly, and some to both bodies acting jointly. There was an obvious difficulty in framing any arrangement for an international chief executive which would satisfy the chief European powers. The president of the Council is the closest approach to a chief executive but he has no special powers and holds his office for a single year. The Secretariat does most of the work which in national governments would fall within executive jurisdiction.

The Per-
manent
Court of
Interna-
tional Jus-
tice.

The covenant of the League of Nations did not make detailed provision for a Permanent Court of International Justice, but merely stipulated that such a tribunal should be created by statute of the League later on. A statute establishing it was passed in 1920 and was ratified by a large number of the League members. Provision was made that the court should consist of eleven judges and four deputy judges to be elected by the Council and Assembly of the League acting together, each judge to serve for a term of nine years. The selection is made, according to the statute, by the Council and the Assembly from distinguished jurists throughout the world, even from countries which are not members of the League. Since the establishment of the World Court three American jurists have been chosen to be judges, namely, John Bassett Moore, Charles Evans Hughes, and Frank Billings Kellogg. The World Court does not sit at Geneva but at The Hague. It elects its own president and usually sits as a single bench, although it is subdivided into three chambers, each one of which may hear cases separately.¹

¹ For the relation of the United States to the protocol for adhering to the World Court, see p. 818.

The World Court is given jurisdiction over certain matters provided for by the treaty of peace and over all other controversies which nations may voluntarily submit to it. Emphasis should be laid upon the point that so far as most disputes are concerned, the bringing of cases before the World Court is altogether voluntary on the part of the countries concerned. Provision is made, however, that any country may accept the jurisdiction of the World Court as compulsory—in other words, that it may agree to submit *all* disputes to the court, and a number of countries have done this. Provision is also made that either the Council or the Assembly of the League may call upon the World Court for advisory opinions with respect to any controversies which come up. These advisory opinions are not final judgments, but are for the guidance of the parties concerned.

Its jurisdiction.

In comparing the general organization of League government with the American federal system various striking contrasts appear. First of all, it is significant that in the Assembly each nation, no matter what its size, has one vote only. In the American Senate the states have equal voting power, but in the House of Representatives the states with larger populations have proportionate voting strength. Equality of voting power is natural in a political union that is just starting. The nations of the world, being accustomed to sovereignty and legal equality were not willing to recognize gradations of rank. The same feeling was manifested among the American colonies when, under the Articles of Confederation, it was provided that every state, small or large, while it might send from two to seven delegates to the Congress, should have the same voting power as any other. There was a long fight over this question in the Constitutional Convention of 1787, the smaller states demanding equal power with the larger, the larger asking that representation should be based upon population. The matter was settled by giving the smaller states equal representation in the Senate, and conceding to the larger states the right to dominate the House. But the framers of the League covenant could not accept a compromise of this sort; for if representation according to population were made the rule in either the Council or the Assembly, India or China would have more delegates than Great Britain, France, Germany, and Italy put together. So all member-countries were given equal representation in the Assembly, while representation in the Council is confined

Outstanding features of League organization:

1. The principle of equality.

to fourteen nations only and permanent representation is restricted to five.

2. The principle of unanimity.

Other marked contrasts should be noted. In the House of Representatives and in the Senate of the United States measures are passed by a majority vote; in the Assembly and Council of the League, unless otherwise specified, a unanimous vote is necessary for action. This is a mark of the distrust with which nations of the world regard one another. The provision for unanimity means that nothing in the way of a decision can be carried through the Assembly if a single nation disapproves, for a solitary vote can block action. The same is true of the Council as respects each nation represented in it. This, of course, establishes a very cumbersome and slow-working scheme of government so far as decisions are concerned; but the requirement of unanimous consent does not apply to recommendations—and a good deal of what the two League bodies do is by way of recommendations, not decisions.

League sanctions.

Decisions of the Council or the Assembly, in any event, have no absolute binding force, as have the enactments of Congress. There is no centralized executive authority with power to see that decisions are obeyed—no executive authority in the national sense. The League has no army to enforce its will. Even the Permanent Court of International Justice has no way of enforcing the judgments that it gives. It lacks the coercive power of a supreme court.

Some significant provisions of the covenant:

The prime purpose in establishing the League of Nations was a desire to lessen the danger of wars. To that end the covenant contains several provisions of high importance which may be briefly summarized:

1. Armaments.

First, there is a provision for the reduction of armaments. The Council is directed by the covenant to have a study made by experts and to report upon the amount of armed strength needed by each nation. The various governments, however, are not bound to accept the Council's recommendations. In any case all members of the League agree to keep one another informed as to the extent of their respective armament programs. This represents, of course, a very modest step in the direction of actual international disarmament. Very little in the way of military disarmament has been accomplished since 1920. Two important conferences on naval disarmament have been held, one at Washington in 1921

and the other at London in 1930, but neither was under the sponsorship of the League.

Second, the members of the League agree to protect one another against any seizure of their territories or any destruction of their independence by outside attacks. In case of any such aggression, or threat of it, the Council is to advise as to how the pledge of integrity can be fulfilled. This is the famous Article X of the covenant which was vigorously criticized in the United States when the proposal to join the League was under discussion. It was regarded as affording an absolute guarantee of existing national territories, even though the same might have been wrongfully acquired or unjustly retained. More especially it was looked upon as establishing a world-wide obligation to maintain the territorial readjustments made by the peace treaty.

2. Article
Ten.

Third, if a dispute which cannot be settled by diplomatic negotiations arises between members of the League, the members agree to refer it to arbitration if it is suitable for such disposition; or, if not, then to the Council of the League for inquiry. The members of the League agree to refrain from hostilities until three months after the Council has rendered its decision.

3. Arbitra-
tion.

Fourth, if any member-nation resorts to war in violation of the preceding provisions, the other members of the League agree to boycott it by the severance of all trade or financial intercourse and to withdraw from relations with it. In extreme cases the Council is authorized to consider and recommend "what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." This provision also drew fire. It was regarded by many Americans as opening the possibility that American forces could be called upon to serve in any part of the world to enforce League decisions if America joined the League.

4. Boycott
and coer-
cion.

Fifth, a very important provision is that by which all treaties hereafter entered into by members of the League shall be registered with the Secretariat and published. Until this has been done, no treaty is considered binding. Secret treaties have been the mainspring of many international controversies in the past and have contributed to the outbreak of more than one war. Their abolition, if the rule is strictly enforced, will remove a source of international suspicion and strife.

5. Regis-
tration of
treaties.

The provision for mandates is an original and interesting feature

6. Mandates.

of the covenant. In previous wars it was the custom of victorious nations to divide the conquered territory among themselves, each taking a share in full ownership. The Peace Conference of 1919, however, agreed to try a new plan, namely, that of giving some former German and Turkish territories as an endowment to the League of Nations. Hence the covenant provides a means by which such territories can be directly governed, through a mandate of the League, by one of its member-countries, but with the understanding that eventually complete self-government shall be given to certain of these territories. The mandatory, or country holding the mandate, is required to present an annual report to the League and a permanent mandates commission is provided to examine these reports. In accordance with this arrangement, several mandates have been granted. Great Britain, for example, has the mandate for Palestine, France for Syria, and New Zealand for certain former German colonies in the South Pacific.

The possession of a mandate does not give the mandate-holding country any exclusive commercial privileges in the territory concerned, but merely creates a trust which is to be exercised for the benefit of the people who inhabit it. Whether this new experiment in the government of dependent territories will work out successfully no one yet can tell. Much will depend upon whether the League acquires prestige and power. If it should collapse, there is little doubt that these various territories would merely pass into the full ownership of the countries which now hold the mandates.

7. The interests of labor.

The covenant provides that the members of the League "will endeavor to secure and maintain fair and humane conditions of labor for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend." This stipulation was made because the widely-differing policies pursued by various countries in relation to labor had long been recognized as a source of international jealousy and friction. Whenever one country accords concessions to its workers, such as a shorter working day or a minimum wage, this action places it at a disadvantage in trade competition with other countries not so progressive. To carry out the covenant pledge relating to labor the League has provided an International Labor Organization based on a special constitution. This organization consists of an

international labor office with its own secretariat, a governing body made up of twelve government delegates from the member-countries, six labor delegates, and six employers' representatives. A general labor conference of delegates from all the member-countries is called each year to discuss matters relating to the interests of labor and to make recommendations to the individual governments. This conference represents an approach to a world economic parliament.

The League of Nations has also established an international health organization for the prevention and control of epidemics. Great improvements in the science of health protection have been made during the past generation by all civilized countries, as a previous chapter has indicated. Nevertheless it is estimated that in the world population of two billion people there are normally about seventy million cases of illness. And no matter how watchful a country may be in guarding the health of its own people, it can never feel safe so long as epidemics are allowed to rage unchecked in other lands. The ravages of disease stop at no national boundaries. Hence illness is a problem for diplomats as well as for doctors. Trade and travel carry infection across even the best-protected borders. In recognition of this the League covenant pledges the member-countries to take steps for the international prevention and control of disease, and this was accomplished by the establishment of a permanent International Health Office in 1923. The function of this office and its staff is to gather data relating to public health questions, to promote the acceptance of the best health regulations by the different countries, and to secure common action on the part of different countries in the case of dangerous epidemics. It has rendered valuable service in all three directions since its establishment.

8. International public health.

The League of Nations is not an end in itself but a means to an end. It is an instrumentality, a mechanism, which will serve the cause of world peace and world progress to the extent that the member-countries assist it in doing so, and to the extent that non-member-countries do not stand in the way. If this mechanism had been in existence, and in working order, during the month of July, 1914, Europe could hardly have been swept into the great conflict with such excited helplessness. The organization of the League is not simple, nor as a scheme of government does it appear efficient; but it is probably as good as could be devised under the

Summary.

circumstances and it has functioned for more than a decade without serious mishap.

Relation of
the United
States to
the League
and to the
World
Court.

The United States has definitely refused to become a member-country but it has been represented at various conferences called by the League and it has contributed to the cost of holding these conferences. When the World Court was established, the United States was invited to adhere to this tribunal even though not a member of the League. President Coolidge asked the Senate to give its consent to such action. The Senate, in 1926, gave consent as requested, but with five reservations. One of these reservations provided that the United States, by adhering to the World Court, should not thereby assume any new relation to the League or any obligations under the various peace treaties. Another stipulated that the United States should have an equal voice with other countries in the election of the judges. In other words, that the United States should be represented in the League Assembly when judges were being chosen, even though not a regular member of the League. Other reservations provided that the United States should not be held to pay any share of the Court's expenses except as determined by Congress; that the United States might withdraw its adhesion to the Court at any time; that the statute of the Court should not be amended without the consent of the United States; and that the Court should not give "advisory judicial opinions" affecting the United States without American consent. The final stipulation was that the United States should not be held to have accepted the statute of the Court until all the League members should have agreed to the foregoing reservations.

The Senate
reservations
to the
World
Court
protocol.

The latter, in due course, indicated their willingness to accept all the reservations with the exception of that relating to advisory judicial opinions. As for the latter a conference of jurists, representing various countries, drew up in 1929 a compromise reservation on this point and President Hoover has asked the Senate to ratify it. This question is now on the Senate's list of business to be dealt with in due course.

Many books relating to the League of Nations, its organization and work, have been published during the past dozen years. There are concise explanations in R. L. Buell, *International Relations* (New York, 1925),

chaps. xxv and xxviii, and in P. B. Potter, *Introduction to the Study of International Organization* (New York, 1928), pp. 287-445. Mention should also be made of H. S. Quigley, *From Versailles to Locarno* (New York, 1927), C. J. N. Baker, *The League of Nations at Work* (New York, 1926); J. S. Bassett, *The League of Nations* (New York, 1928); A. S. de Bustamante, *The World Court* (New York, 1925); M. O. Hudson, *The Permanent Court of International Justice* (Cambridge, 1925); Paul Perigord, *The International Labor Organization* (New York, 1926); and the *Year Books* published by the World Peace Foundation.

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